

# SAN DIEGO COUNTY SUPERIOR COURT RULES

Revised January 1, 2004

---

**DAILY JOURNAL CORPORATION**

915 East First Street, Los Angeles, California 90012  
P.O. Box 54026, Los Angeles, California 90054  
Telephone (213) 229-5300

San Diego Commerce  
2652 4th Ave. 2nd Floor  
San Diego, CA 92103  
Telephone (619) 232-3486  
Copyright 2004. All Rights Reserved.

# **SAN DIEGO COUNTY**

## **Table of Contents**

**Revised January 1, 2004**

### **DIVISION V FAMILY LAW**

#### **CHAPTER 1 GENERAL**

5.1	Applicability of Rules (Revised 1/1/2004).....
5.2	Court Locations (Revised 1/1/2004).....
5.3	Work of the Family Law Division (Renumbered 7/1/2001).....

#### **CHAPTER 2 CASEFLOW MANAGEMENT**

5.4	Case Assignment (Renumbered & Rev. 7/1/2001) .....
5.5	Alternative Dispute Resolution (Renumbered 7/1/2001) .....
5.6	Filing Locations (Revised 1/1/2002) .....
5.7	<i>Marvin</i> Actions (Renumbered & Rev. 7/1/2001) .....
5.8	Consolidated Cases (Renumbered 7/1/2001) .....
5.9	Status Conference (Revised 1/1/2004).....
5.10	Case Management Conference (Revised 1/1/2003) .....
5.11	Mandatory Settlement Conference (Revised 1/1/2003) .....

#### **CHAPTER 3 EX PARTE MATTERS**

5.12	Time for Ex Parte Matters (Renumbered & Rev. 7/1/2001).....
5.13	Notice to Opposing Counsel (Revised 1/1/2004) .....
5.14	Exceptions to Notice Requirement (Renumbered & Rev. 7/1/2001).....
5.15	Application (Renumbered & Rev. 7/1/2001).....
5.16	Requesting Court File Before Ex Parte Appearance (Renumbered & Rev. 7/1/2001) .....
5.17	Pre-Screening for Unrepresented Litigants (Renumbered & Rev. 7/1/2001) .....
5.18	Sign-Up Lists for Ex Parte Matters (Renumbered & Rev. 7/1/2001) .....
5.19	Order of Hearing Ex Parte Matters (Renumbered 7/1/2001) .....
5.20	Meet and Confer (Renumbered 7/1/2001).....
5.21	Ex Parte Application Form (Renumbered 7/1/2001).....
5.22	Evidentiary Declarations (Renumbered & Rev. 7/1/2001) .....
5.23	Exceptions to Notice, Application and Evidentiary Requirements (Revised 1/1/2003).....
5.24	Proposed Order (Renumbered 7/1/2001) .....
5.25	Ex Parte Motions Re Order Shortening Time for Hearing and Deposition (Renumbered & Rev. 7/1/2001) .....
5.26	Ex Parte Motions Re Custody and Visitation (Renumbered 7/1/2001).....
5.27	Ex Parte Motions Re Earnings Assignment Orders (Renumbered 7/1/2001).....

#### **CHAPTER 4 TEMPORARY RESTRAINING ORDERS (TRO'S)**

5.28	Appropriate Forms and Filing with the Sheriff (Revised 1/1/2003) .....
5.29	Residence Exclusion Orders (Renumbered 7/1/2001).....
5.30	Personal Conduct Orders (Revised 1/1/2003).....
5.31	Custody and Visitation Orders (Renumbered 7/1/2001) .....
5.32	Restraint of Accounts (Renumbered 7/1/2001) .....
5.33	Restraining Orders Issued by the Clerk in Non-Domestic Violence Cases (Revised 1/1/2003) .....
5.34	Continuances (Renumbered 7/1/2001) .....

#### **CHAPTER 5 ORDERS TO SHOW CAUSE/ LAW & MOTION RULES**

## San Diego County Superior Court Rules - Table of Contents

---

5.35	Time for Service and Filing of Papers (Renumbered & Rev. 7/1/2001).....
5.36	Form of Papers Presented for Filing (Revised 1/1/2003).....
5.37	Lodgments (Renumbered & Rev. 7/1/2001).....
5.38	Fee Waivers (Renumbered 7/1/2001) .....
5.39	Family Court Services Initial Screening Form (Renumbered 7/1/2001) .....
5.40	Income and Expense Declarations (Renumbered 7/1/2001) .....
5.41	Pleadings not Timely Served (Renumbered 7/1/2001).....
5.42	Companion Matters (Revised 1/1/2003).....
5.43	Reissuing Orders to Show Cause (Revised 1/1/2003) .....
5.44	Post Judgment Service of Process (Renumbered 7/1/2001) .....
5.45	Hearings on Orders to Show Cause and Noticed Motions (Revised 1/1/2004) .....

### **CHAPTER 6 DECLARATIONS OF DISCLOSURE, INCOME & EXPENSE DECLARATIONS, AND TAX RETURNS**

5.46	Declaration of Disclosure (Renumbered & Rev. 7/1/2001).....
5.47	Income and Expense Declarations (Revised 1/1/2004) .....
5.48	Attachments to Income and Expense Declaration (Renumbered 7/1/2001) .....
5.49	Disclosure of Income Tax Returns and Forms (Renumbered 7/1/2001) .....
5.50	Privileges Retained (Renumbered 7/1/2001) .....

### **CHAPTER 7 SHORT CAUSE TRIALS**

5.51	Short Cause Trials (Revised 1/1/2004).....
------	--

### **CHAPTER 8 LONG CAUSE TRIALS**

5.52	Long Cause Trials (Revised 1/1/2004) .....
------	--

### **CHAPTER 9 FAMILY SUPPORT DIVISION MATTERS**

5.53	Calendaring (Revised 1/1/2004).....
5.54	Orders (Revised 1/1/2003).....
5.55	Custody/Visitation Matters (Revised 1/1/2004).....
5.56	Conduct of Hearings & Trials (Renumbered 7/1/2001) .....
5.57	Time for Ex Parte Matters (Renumbered 7/1/2001).....

### **CHAPTER 10 FAMILY COURT SERVICES**

5.58	Mediation Required (Revised 1/1/2003).....
5.59	Use of Private Mediator (Renumbered 7/1/2001) .....
5.60	Mediation at Family Court Services (Revised 1/1/2004).....
5.61	Custody Evaluations (Revised 1/1/2003).....

### **CHAPTER 11 JUDGMENTS AND ORDERS**

5.62	Judgment by Default or Uncontested Hearing (Revised 1/1/2004).....
5.63	Preparation of Orders and Judgments (Renumbered 7/1/2001).....

### **CHAPTER 12 MISCELLANEOUS**

5.64	Child Support (Renumbered 7/1/2001) .....
5.65	Spousal Support Guideline Information (Renumbered 7/1/2001).....
5.66	Attorneys Seeking to be Relieved as Attorney of Record (Renumbered & Rev. 7/1/2001) .....
5.67	Bifurcation of Marital Status (Renumbered 7/1/2001).....
5.68	Writs of Execution (Renumbered 7/1/2001) .....

## San Diego County Superior Court Rules - Table of Contents

---

5.69	Elisors (Renumbered & Rev. 7/1/2001) .....
5.70	Avppointment of Counsel for Children (Revised 1/1/2003) .....
5.71	Appraisal of Closely Held Business Interests (Renumbered 7/1/2001).....
5.72	Cases Dismissed After Two Years (Revised 1/1/2003) .....
5.73	Family Law Facilitator's Duties (Renumbered 7/1/2001) .....
5.74	Supervised Visitation Requirements (Effective 1/1/2004) .....
5.75	Communication Between Court Divisions (Effective 1/1/2004) .....
Appendix A	Telephone Numbers of Court and Calendar Clerks (Revised 7/1/2001) .....
Appendix B	Alternative Dispute Resolution Informational Notice .....
Appendix C	Family Law Branch Court Filing Boundaries (Revised 1/1/2000) .....
Appendix D	Mandatory Short Cause Trial Statement (Revised 1/1/2000) .....
Appendix E	Long Cause Trial Rules (Revised 1/1/2000).....
Appendix F	Family Support Division (Revised 1/1/2000) .....
Appendix G	Location of Family Court Services (Revised 1/1/2000).....
Appendix H	Stipulation and Order For Bifurcation (Revised 1/1/2000) .....
Appendix I	Interim Qualified Domestic Relations Order Re: Survivor Benefits (Revised 1/1/2000) .....
Appendix J	Timeline for Appraisals of Closely Held Business (Revised 1/1/2000).....
Family Law Forms (Alphabetical Listing) (Revised 7/1/2001).....	

## DIVISION V FAMILY LAW

### CHAPTER 1 GENERAL

#### Rule 5.1

##### **Applicability of Rules**

These rules are intended to provide uniformity of practice and procedure among all departments involved in family law matters in San Diego County. These rules should be considered as guidelines to which the court will generally adhere. Variations between divisions are noted within the body of these rules.

Attorneys and unrepresented litigants (also called "pro pers") shall comply with all applicable statutes in addition to these rules and the California Rules of Court (especially rules 1200 et seq.).

Unrepresented litigants shall be treated in the same manner as counsel and shall be held to the same standards. All references to counsel in these rules apply equally to unrepresented litigants.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001, Rev. 1/1/2004)

#### Rule 5.2

##### **Court Locations**

The Central Division, Family Law Courthouse ("Central Division") is located at 1501 Sixth Avenue, San Diego. The South County Division (South County) located at 500 Third Avenue, Chula Vista, and the East County Division ("East County"), located at 250 East Main, El Cajon, are divisions, not separate venues. North County Division ("North County") is a separate venue, located at 325 South Melrose Drive, Vista. Support enforcement actions filed by the Department of Child Support Services (formerly known as the District Attorney's Bureau of Child Support Enforcement) may be heard at the Central Division, County Courthouse, located at 220 West Broadway, San Diego, or any other court location. Domestic Violence Protection Act cases for the Central Division are filed and heard at the Central Division, Madge Bradley Building, Family Court Annex, located at 1409 Fourth Avenue, San Diego.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

#### Rule 5.3

##### **Work of the Family Law Division**

This division of the court hears all trials and motions in family law matters, including warrants in lieu of writ of habeas corpus, warrants for arrest in child custody matters, motions to determine arrearages due on support orders, motions for support, custody, restraining orders and attorneys' fees, applications under the Domestic Violence Prevention Act, Uniform Parentage Act cases, *Marvin* actions, and related discovery motions.

(Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Amended Eff. 1/1/92; Amended Eff. 4/1/95; Renumbered Eff. 7/1/98; 7/1/2001)

## CHAPTER 2 CASEFLOW MANAGEMENT

#### Rule 5.4

##### **Case Assignment**

New cases are randomly assigned to a judicial officer for all purposes. All appearances in the case must be made before the assigned judicial officer, unless otherwise ordered. Appendix A contains a list of phone numbers for each department. The petitioner/plaintiff will receive a notice of case assignment when the petition or complaint is filed. The petitioner/plaintiff must serve the respondent/defendant with a copy of the notice of case assignment with the petition or complaint.

Should a judicial officer's caseload be reassigned, notice of this reassignment will be posted at the courthouse and/or mailed by the court on form SUPCT D-133. Pursuant to Code of Civil Procedure section 170.6, subdivision (2), peremptory challenges are due 10 days after actual notice of the case reassignment, or if the party has not yet appeared in the action, within 10 days after the appearance.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

#### Rule 5.5

##### **Alternative Dispute Resolution**

The Family Law Act and the California Rules of Court encourage alternative dispute resolution of family matters. The family law court promotes mediation of family law cases and, when appropriate, the selection of judicial case management as a means of alternative dispute resolution.

##### **A. Mediation**

Upon being retained, attorneys representing family law litigants (except in cases of domestic violence) are encouraged to provide their clients with the informational notice set forth in Appendix B and to advise their clients of the availability of mediation as an alternative means of dispute resolution. Parties wanting to participate in mediation shall advise the court as soon as possible by submitting a written stipulation signed by both parties and attorneys.

##### **B. Judicial Case Management**

Attorneys representing family law litigants are encouraged to advise their clients of the availability of judicial case management under Family Code section 2032, subdivision (d).

(Adopted Eff. 4-1-95; Renumbered Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

#### Rule 5.6

##### **Filing Locations**

Family law cases must be filed in the division in which the petitioner and/or the respondent reside, or, in paternity cases, where the child resides. Appendix I-A reflects the division boundaries within the county, sorted by zip codes. Original petitions must bear the proper filing location and be filed in the appropriate division.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Amended Eff. 1/1/2002)

**Rule 5.7*****Marvin Actions***

Any family law related action not specifically authorized by the Family Law Act (e.g., *Marvin* complaints) must initially be filed as a separate proceeding in the Family Law Division. Upon the court's own motion, or if a timely request for a jury trial is made and granted, the assigned judicial officer shall consult with the supervising judge to determine whether the matter will remain in the Family Law Division for trial. On the court's own motion or upon noticed motion, the action may be consolidated with a pending family law case pursuant to California Rule of Court, rule 367. (See also rule 5.8.)

(Adopted Eff. 1-1-92; Renumbered & Amended Eff. 4/1/95; Renumbered Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.8*****Consolidated Cases***

If the court consolidates a case, the case of broader jurisdiction, or the lower case number if the cases are of equal jurisdiction, shall be designated as the lead case and the originals of all papers thereafter filed shall be placed in the lead case file. (Cal. Rules of Court, rule 367.) Any hearing date in any case other than the lead case shall be vacated or reset, and all future hearing dates will be noticed under the lead case number.

(Adopted Eff. 4-1-95; Renumbered Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.9*****Status Conference***

The court shall calendar a status conference 150 days after the filing of the petition, unless the parties have requested that the status conference be held earlier or the parties filed a declaration pursuant to rule 5.9 B.

**A. Scheduling and Notice.** The court will provide notice of the status conference to all parties. The parties may request one continuance telephonically up to one day before the scheduled conference date. The continuance must be by stipulation if respondent has appeared. Additional continuances may be requested with an ex parte declaration of good cause. Good cause may consist of, but is not limited to, a showing that significant progress has been made by the parties toward a resolution of the case through settlement, mediation and/or reconciliation. Both counsel and the parties must agree that the status conference should be continued.

**B. Mediation or Collaborative Law.** Parties who at the time of the initial filing of the petition provide a declaration executed by both parties indicating they are presently in mediation with a professional mediator shall be exempt from the status conference program for a period of nine months. Parties who at the time of the initial filing of the petition provide a declaration signed by both parties indicating they have retained attorneys who plan to resolve the matter through the collaborative law process (defined as a procedure where both

parties have retained attorneys who have received formal training in collaborative practice and both attorneys agree to substitute out of the case if agreement is not reached as required by collaborative law principles) shall be exempt from the status conference program for a period of nine months. If a judgment or dismissal is not filed within nine months of the filing of the petition, the matter will be noticed for a status conference.

**C. Preparation for Conference.**

**1.** No later than 30 days prior to the conference, the parties must serve a completed Schedule of Assets and Debts and the Income and Expense Declaration and lodge in the courtroom no earlier than 24 hours before the conference.

**2.** Prior to the conference, the parties shall meet and confer over a suggested timetable for resolution of the case. Such timetable shall include suggested motion and discovery cut-off dates and trial dates. Parties shall make a good faith effort to obtain written agreements from any experts that the requisite evaluations can be performed within the times specified.

**D. Attendance at Conference.** Parties shall be present at the status conference and shall be fully prepared to discuss the timetable for resolution and other issues raised by the pleadings. Parties to the action must appear even if represented by counsel unless the court excuses the parties' personal appearance. Personal appearance by parties represented by counsel is not required if the parties agree to set trial or CMC dates on the matter in accordance with sections E.1 and E.2 below. If clients do not appear, counsel must have full authority to discuss and, where necessary, bind their client(s) to the orders to be made under this rule. Any attorney making a special appearance for counsel of record must have actual knowledge of the facts and procedural history of the case. If one party fails to appear, the court will set the matter for case management and/or trial.

**E. Orders:** The court shall make the following orders at the status conference:

**1.** Set a trial date for short cause matters (i.e., those cases which will take 3 hours or less to try.)

**2.** Set a date within approximately 6 months of the status conference for a case management conference ("CMC") in long cause matters.

**3.** Set a date for the Exchange of Declarations of Disclosure.

**4.** Set a discovery cut-off date.

**5.** Set a date for the exchange of expert witnesses information.

**6.** Set an FCS date in cases where custody/visitation is at issue and no evaluation or private mediator is involved.

**7.** Select expert psychological, appraisal and other witnesses.

**8.** Resolve appointment of a Special Master requests made pursuant to Code of Civil Procedure section 639 and California Rules of Court, rules 244.1 and 244.2

9. Determine any issues to be bifurcated.

10. Any other orders the court deems appropriate for the expeditious resolution of the case.

**F. Sanctions for Noncompliance.** For any noncompliance with this rule, the court will set an order to show cause why sanctions should not be imposed pursuant to Code of Civil Procedure section 575.2.

(Adopted Eff. 1-1-92; Renumbered & Amended Eff. 4-1-95; Renumbered Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Deleted & Rev. 1/1/2003, Rev. 1/1/2004)

### **Rule 5.10**

#### **Case Management Conference**

Unless excused by the court, counsel must jointly complete a case management conference (CMC) Questionnaire (SUPCT D-134) and file it with the court at or before the CMC.

All discovery, except expert witness depositions, must be completed by the date of the CMC.

At the CMC the court shall set a date for a Mandatory Settlement Conference to be conducted no later than 60 days from the date of the CMC.

At the CMC, counsel shall exchange and file with the court 1) a list of settled issues; and 2) a list of issues to be litigated. Absent leave of court, a party may not present an issue for trial that was not set forth in the CMC list of issues to be litigated.

The mandatory settlement conference date will be set at the time of the CMC. However, no mandatory settlement conference will be set until counsel certify all discovery is complete, no law & motion matters are pending or anticipated, and all expert reports have been exchanged or upon court order.

If a mandatory settlement conference is unable to proceed because counsel has improperly certified the case, the matter will be returned for another CMC before the assigned judge, who may impose monetary sanctions against counsel for improperly certifying the case as being ready for the mandatory settlement conference.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003)

### **Rule 5.11**

#### **Mandatory Settlement Conference**

##### **A. Calendaring.**

No long cause case will be tried until the parties participate in a mandatory settlement conference ("MSC"). The MSC in long cause cases will be set at the final case management conference.

Absent a court order allowing a party to appear telephonically, both parties and their counsel of record must personally attend the MSC. Failure to comply will result in monetary sanctions.

Counsel and parties must be present for the calendar call, during which time the court will explain the settlement process and assign locations for the settlement conferences. Because of the time settlement judges spend reading the briefs and preparing for the conference, there shall be NO

continuances granted on the day of the mandatory settlement conference.

##### **B. Attorney Participation on the Settlement Conference Panel.**

Whenever possible, an experienced family law attorney will be assigned as a temporary judge to each case to assist the parties and trial counsel in reaching a settlement (where possible, two attorneys will be assigned for cases at the Central Division). The supervising judge and any judges not otherwise engaged may be available for additional assistance.

Approximately six months before the date(s) of service, the court will mail invitations to family law attorneys to participate on the settlement conference panel. If an invited attorney wishes to participate, he or she shall mail their written acceptance to the court forthwith and calendar the date(s) of service. The court will telephone confirmations to the panelists not later than the Monday immediately preceding the Thursday settlement conference date.

An experienced panelist will be assigned to sit with each new panelist as a co-panelist during the new panelist's first two settlement conferences.

The minimum qualifications for service on a settlement conference panel hearing most cases are:

1. Certified Family Law Specialist; or
2. Seven years of legal practice, of which at least 75 percent is in family law; AND
3. Attendance in the CFLS-sponsored settlement conference seminar; or commitment to attend the CFLS-sponsored settlement conference seminar to be presented or a comparable seminar, or to listen to the tapes from the seminar; AND
4. Approval of the supervising judge of the Family Law Division.

The minimum qualifications for service on a settlement conference panel hearing complex case are:

1. Certified Family Law Specialist; or
2. 15 years of legal practice, of which at least 90 percent is in family law; AND
3. Approval of the supervising judge of the Family Law Division.

##### **C. Telephonic Confirmation With Calendar Clerk.**

Counsel at least six court days in advance of the MSC shall call the court to confirm that the MSC will go forward. An MSC will only be continued for good cause. The court will generally notify counsel who the settlement judges will be at this time. Where the MSC is not timely confirmed, the court will return the matter back for a CMC before the assigned judge.

##### **D. Meet and Confer Requirement.**

Counsel shall meet and confer either in person or by phone at least five court days before the day of the MSC to resolve as many issues as possible and to specify those matters to be litigated. Results of the conference shall be included in the settlement brief. Failure to comply with these requirements shall subject offending counsel to monetary sanctions pursuant to Code of Civil Procedure section 575.2.

##### **E. Settlement Briefs.**

Each party shall prepare a settlement brief. Documents to be submitted to the settlement judges

include the preliminary declaration of disclosure, and, if support or fees are at issue, an income and expense declaration. Each party shall serve a copy of each on opposing counsel and the settlement judges in such a manner as to assure they are received no later than 4 p.m. the Monday preceding the MSC, except in short cause cases in North County where they may be served at the MSC. The settlement briefs shall be in the same format as the mandatory short cause trial statement (Appendix D). Each party shall state with specificity that party's proposal on each contested issue and the reasons therefor. Extensive argument is not permitted. Income and expense declarations shall include the attachments described in rule 5.48.

**F. Trial Setting When Case Does not Settle**

If a case does not settle then the settlement judge and counsel for each party, or the parties if unrepresented, shall complete, execute and return the Family Settlement Conference At Issue Form (SUPCT D-116) to the clerk of the department managing the settlement calendar prior to adjourning the settlement conference. The parties will then be directed to the assigned judge for trial setting. (Adopted Eff. 1-1-89; Renumbered Eff. 1-1-90; Amended Eff. 7-1-91; Renumbered & Amended Eff. 1-1-92; Renumbered & Amended Eff. 4-1-95; Amended Eff. 7-1-95; Amended Eff. 1-1-97; Renumbered & Amended Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003)

### **CHAPTER 3 EX PARTE MATTERS**

#### **Ex Parte Requests are Intended for Emergency Relief Except Where Noted**

**Rule 5.12****Time for Ex Parte Matters**

Morning ex parte matters will be heard Monday through Friday at 8:30 a.m. Afternoon ex parte matters are heard every court day at 1:30 p.m. except in the Central Division court where they are heard only on Wednesdays at 1:30 p.m. Additional hours may be added as deemed necessary by the supervising judge.

If the court's business permits, a judicial officer may hear emergency ex parte matters at any time during normal business hours.

As a general rule, ex parte matters will be heard in open court and on the record. (Eff. 7/1/98; Renumbered & Rev. 7/1/2001)

**Rule 5.13****Notice to Opposing Counsel**

Except as provided in Family Code section 6300, the moving party must notify the opposing party or, if appropriate, the Department of Child Support Services, of the date and time of the ex parte appearance, and the nature of the relief to be requested. Notice for all ex parte appearances must be given no later than 10 a.m. on the previous court day.

A Declaration re Notice by the moving party, separate and distinct from the Ex Parte Application form and the evidentiary declaration, shall set forth the details of the notice given or of a good-faith attempt to do so. This Declaration re Notice shall be filed immediately following the ex parte appearance. "Notice" of an ex parte appearance given by facsimile ("FAX") machine does not constitute notice under these rules.

(Eff. 7/1/98; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

**Rule 5.14****Exceptions to Notice Requirement**

Except as provided in Family Code section 6300, if the moving party alleges that notification may negate the benefit of the requested relief, or explains why notice could not be given, ex parte relief may be granted without the required notice. The Declaration re Notice shall set forth the factual basis upon which such claim is based. The parties may stipulate that notice is unnecessary.

(See rule 5.23 "Exceptions to Notice, Application and Evidentiary Requirements" for other exceptions to the Notice Requirements.)

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.15****Application**

A case number must be issued before a party may appear ex parte. This includes requests for temporary restraining orders, provisional remedies, or other emergency relief.

(Eff. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.16****Requesting Court File Before Ex Parte  
Appearance**

When ex parte notice is given licensed attorneys shall contact the Family Court files division and request they pull the file for the ex parte hearing. The phone numbers are: Central Division (619) 557-2073 or 557-2074; East County (619) 441-6770; South County (619) 691-4600; North County (760) 726-9595.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.17****Pre-Screening for Unrepresented Litigants**

Unrepresented litigants seeking an ex parte order in non-domestic violence cases must present their papers to the business office for review by 4 p.m. the day before an 8:30 a.m. ex parte appearance the following morning, or by 11 a.m. the day of an ex parte appearance that afternoon. If the papers are in order, the business office will give the unrepresented litigant a "green slip" and will pull the court file for the hearing.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)



**Rule 5.18****Sign-Up Lists for Ex Parte Matters**

Each person seeking ex parte relief shall sign either the "uncontested" list or "contested" list, depending on whether the matter is contested. There are two separate lists, one for attorneys and one for unrepresented litigants. The list must be signed before 8:30 a.m. for morning matters and before 1:30 p.m. for afternoon matters.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.19****Order of Hearing Ex Parte Matters**

Judicial officers generally hear ex parte matters in the following order:

1. Unopposed/agreed requests with one attorney present;
2. Unopposed/agreed requests with two or more attorneys present;
3. Opposed matters which have a time estimate of five minutes or less; and
4. Opposed matters with a time estimate of more than five minutes. Counsel shall confer and cooperate in arranging the ex parte line to conform with this rule.

If an opposed matter cannot be heard before the court's normal calendar begins, the moving party shall have the option of returning to the court at another ex parte time (without priority) or being added to the court's normal calendar for that day to be heard with other calendared matters.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.20****Meet and Confer**

If a matter is contested, both sides shall meet and confer on the issue(s) in order to read and consider any written materials and to allow the responding party to brief the moving party on his or her position. The meet & confer shall occur in such a fashion to ensure that all issues and positions have been discussed before appearing before a judicial officer. Failure to comply with this rule may result in sanctions, including denial of the ex parte request.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.21****Ex Parte Application Form**

The moving party shall completely fill out the pre-printed NCR ex parte application form (SUPCT D-46). If the opposing party or attorney is present, the moving party shall personally serve him or her with the ex parte application form. The completed form shall be presented to the judicial officer at the beginning of the ex parte hearing.

(Amended Eff. 1/1/96; Renumbered & Amended Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.22****Evidentiary Declarations**

The judicial officer will consider only ex parte requests supported by written evidentiary

declarations. Ex parte application forms are not evidence.

Ex parte declarations shall contain facts demonstrating why the matter is appropriately resolved by an ex parte hearing, rather than on the court's ordinary motion calendar. These declarations must be personally served on the opposing party or attorney, if present, and must be filed immediately after the ex parte hearing.

If the facts shown in the evidentiary declarations do not justify a particular order, it will not be granted. A moving party cannot verbally correct declarations at the ex parte hearing. If both counsel agree, these evidentiary limitations may be waived.

(Eff. 7/1/98; Renumbered Eff. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.23****Exceptions to Notice, Application and Evidentiary Requirements**

Requests for the following types of ex parte relief do not require notice to opposing counsel, an Ex Parte Application, or evidentiary declarations:

1. Signature of an order or judgment which opposing counsel has approved or agreed not to oppose entry;
2. Signature of an order or judgment after a default proceeding;
3. Wage and earning assignment orders (See rule 5.27);
4. Restoration of former name after judgment;
5. Order for publication; and
6. Order shortening time to depose respondent within twenty days of service of summons.

Each family court location has a drop box where these ex parte requests may be deposited for processing. An attorney service slip or stamped return envelope should be included if conformed copies are requested.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003)

**Rule 5.24****Proposed Order**

The moving party shall give the judicial officer a proposed order at the ex parte hearing. If a submitted order is not signed, the judicial officer shall write the words "not signed" on the signature line. The original unsigned order shall be placed in the court file.

If opposing counsel is present, the moving party shall personally serve him or her with a copy of the proposed order. If the proposed order is contained in the Ex Parte Application form, the moving party shall file the white original with the court clerk and give the pink copy to opposing counsel.

If the opposing party or counsel is not present, the moving party shall serve him or her with a copy of the ex parte application form, evidentiary declarations and the proposed order (or the final order if one is signed) by mail within 24 hours of the ex parte hearing.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.25****Ex Parte Motions Re Order Shortening Time for Hearing and Taking Deposition**

When requesting an order shortening time for hearing and/or taking deposition, the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown, time for service may be shortened up to two court days before the hearing date and to five calendar days before the taking of a deposition.

Upon a proper supporting declaration, the business office may routinely grant an order shortening time for respondent's deposition to a date that is within 20 days after service of Summons on the Respondent, pursuant to Code of Civil Procedure section 2025, subdivision (b)(2). Attorneys requesting an order shortening time for the taking a deposition shall submit the following supporting declaration with their request:

"I am an attorney at law duly licensed to practice in the State of California and the attorney for the Petitioner herein. For me to properly prepare for the order to show cause which is being filed at this time, I must depose the respondent. I therefore request that the court shorten time so that respondent may be deposed on [enter date]."

(Adopted Eff. 1-1-89; Renumbered Eff. 1-1-90; Amended 1-1-92; Renumbered & Amended Eff. 4-1-95; Amended 1-1-97; Renumbered & Amended Eff. 7/1/98; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.26****Ex Parte Motions Re Custody and Visitation**

A stipulated order regarding custody may be signed where a copy of the custody agreement or appropriate declaration is attached to the petition. (Fam. Code, § 3061.)

Other ex parte orders regarding custody and visitation will only be granted upon a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. (Fam. Code, § 3064.) An ex parte motion requesting a change in a child's summer or holiday vacation, or the school that the child attends, must be presented sufficiently in advance to allow the court to obtain any necessary information. These orders are seldom granted ex parte, but the judicial officer may grant an order shortening time for a hearing on the issue.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.27****Ex Parte Motions Re Earnings Assignment Orders**

Unless the order provides otherwise, all support orders made on or after July 1, 1990 are deemed payable by wage assignment. (Fam. Code, § 5230.) Earnings assignment orders may be granted ex parte for support orders made on or after July 1, 1990 by submitting the assignment order separately or with the underlying support order or judgment. Notice to the opposing counsel or party is not required.

Earnings assignment orders may be granted ex parte for support orders made before July 1, 1990 by submitting an "Ex Parte Application for Wage and Earnings Assignment Order" (SUPCT D-38). Notice to the opposing counsel or party is not required. (Fam. Code, § 5252.)

Ex parte assignment orders for arrearages accrued under any support order may be requested by completing a declaration, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and unpaid. Ex parte assignment orders for arrearages are granted without prejudice to subsequent attack by a motion to quash.

Attorneys' fees will not be granted ex parte for assignment orders. Fees incurred obtaining an assignment order for arrearages may be requested by noticed motion.

(Adopted Eff. 1-1-89; Renumbered Eff. 1-1-90; Amended 1-1-92; Renumbered & Amended Eff. 4-1-95; Renumbered & Amended 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

## **CHAPTER 4 TEMPORARY RESTRAINING ORDERS (TRO's)**

**Rule 5.28****Appropriate Forms and Filing with the Sheriff**

When seeking a TRO pending a court hearing, the current forms adopted by the Judicial Council shall be used. In all cases, including cases which are not filed under the Domestic Violence Protection Act, parties seeking personal conduct, stay away or residence exclusion orders must file an Order to Show Cause and Temporary Restraining Order and an Application and Declaration for Order (Domestic Violence). If custody or visitation orders are requested, parties must also file a Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), a Child Custody, Visitation, and Support Attachment to Application and Declaration for Order, and a Child Custody Visitation Order Attachment.

In non-domestic violence cases where orders other than custody and personal conduct, stay away or residence exclusion are requested, parties must file an Order to Show Cause, an Application for Order and Supporting Declaration, and Temporary Orders. In non-domestic violence cases the party must prepare a declaration on a separate sheet and attach it to the Application. Supporting allegations in the declaration must refer to the same number as the order it supports on the temporary order form.

The court will deliver a copy of the protective restraining order to the Sheriff for entry into the Department of Justice's computer system (CLETS).

To be enforceable by a law enforcement agency the protected person must give a conformed, certified copy of the protective restraining order to the Office of the San Diego County Sheriff for service. Each family court facility has a Sheriff's screening station where such orders may be delivered for service.

(Eff. 7-1-89, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003)

**Rule 5.29****Residence Exclusion Orders**

An ex parte residence exclusion ("kick-out") order requiring a party to vacate the family home shall be signed by a judicial officer only. Such orders will not be issued unless there is a clear showing, by declaration, that recent physical violence has occurred or there is a threat of imminent physical violence. This showing shall include a full description, in detail, of the most recent instance(s) of physical harm, disposition toward violence, intoxication or abuse of drugs, and specify the date of EACH occurrence. "Recent" violence is generally defined as physical violence within the past 30 days.

If the foregoing guidelines preclude the issuance of an ex parte residence exclusion order, counsel may request an order shortening time for hearing and service.

If a residence exclusion order is granted, a separate removal order (form SUPCT D-72) directing the Sheriff to assist in the removal shall be prepared and submitted to the court for signature. Two certified copies of the removal order are required by the Sheriff.

(Adopted Eff. 1-1-89; Renumbered Eff. 1-1-90; 7-1-91; Amended 1-1-92; Renumbered & Amended Eff. 4-1-95; 7-1-95; Renumbered & Amended 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.30****Personal Conduct Orders**

An ex parte order pursuant to Family Code section 6320 restraining a party from contacting, attacking, telephoning, etc. a protected person, or restraining a person from coming within a specified distance of the protected person, or a person's residence, place of work, school, etc., shall be signed by a judicial officer only. Such orders will not be issued unless there is a clear showing, by declaration, that recent physical violence has occurred or there is a threat of imminent physical violence. This showing shall include a full description, in detail, of the most recent instance(s) of physical harm, disposition toward violence, intoxication or abuse of drugs, and specify the date of EACH occurrence. "Recent" violence is generally defined as physical violence within the past 30 days. Where the person sought to be restrained is a non-custodial parent, box 1(c)(2) on the temporary order form must be checked. An order mutually restraining both parties from engaging in this conduct will not be issued without adequate supporting declarations by both parties. (Fam. Code, § 6305.)

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003)

**Rule 5.31****Custody and Visitation Orders**

Restraining orders regarding custody and visitation shall be signed by a judicial officer only. A stipulated order regarding custody may be signed

where a copy of the custody agreement or appropriate declaration is attached to the petition. (Fam. Code, § 3061.) Pursuant to Family Code section 3064, any other restraining orders regarding custody and visitation will only be granted upon a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. A motion requesting a change in a child's summer or holiday vacation, or the school that the child attends, shall be presented sufficiently in advance to allow the court to obtain any necessary information.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.32****Restraint of Accounts**

The court will not grant a temporary restraining order to enjoin the removal of funds or securities from financial institutions or securities firms unless there is notice to the opposing side or a declaration stating facts which show a clear danger of the dissipation of funds. These orders shall be issued by a judicial officer only.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.33****Restraining Orders Issued by the Clerk in Non-Domestic Violence Cases**

The business office has been authorized to issue certain TRO's in cases that are not filed under the Domestic Violence Protection Act. The clerk's duties are strictly ministerial. Parties may avoid an ex parte appearance before a judicial officer by complying precisely with these rules. While declarations containing the language indicated below will enable the clerk to issue these particular orders, the same declaration may be insufficient evidence at a subsequent opposed hearing. Parties may still need to provide a narrative declaration containing factual allegations before the opposed hearing. Requests for any orders on the temporary order form which are not listed below must be presented to a judicial officer. The orders which the Business Office may issue are:

**A. Property Restraint**

The orders listed in section 5 of the temporary order form are already contained in the family law summons and take effect upon service of summons. However, the clerk may issue a mutual order listed in section 5 of the temporary order form without a declaration.

**B. Property Control**

The clerk may issue an order listed in section 6a of the temporary order form only if the order is limited to a specific motor vehicle. The declaration must state "(Petitioner/Respondent) has regularly been the primary driver of the (year/make). The other party has regularly been the driver of another, currently-operating motor vehicle, namely the (year/make)."

**C. Minor Children**

The order listed in section 7a(1) of the temporary order form restraining a party from removing any minor children of the parties from the State of California is already contained in the family law

summons and takes effect upon service of summons. However, the clerk may issue an order listed in section 7a(1) of the temporary order form without a declaration.

(Adopted Eff. 1-1-89; Renumbered Eff. 1-1-90; Amended 1-1-92; Renumbered & Amended Eff. 4-1-95; 7-1-95; Renumbered & Amended Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003)

**Rule 5.34****Continuances**

Temporary restraining orders will remain in effect during any continuance, absent a stipulation of the parties to the contrary. Whether the continuance is requested by telephone or in person, the Clerk's Office will inform the Sheriff's Office that temporary CLETS orders are to remain in effect pending the new date.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

## **CHAPTER 5 ORDERS TO SHOW CAUSE/ LAW & MOTION RULES**

**Rule 5.35****Time for Service and Filing of Papers**

Absent an order shortening time, all moving, opposing, and reply papers, as well as orders to show cause, must be filed and served in compliance with Code of Civil Procedure section 1005, subdivision (b).

Supplemental pleadings serve a valid purpose in family law matters, particularly where relevant evidence has been obtained through discovery subsequent to the filing of the original moving papers. In recognition of this fact, supplemental pleadings may be filed and served by either party up to five court days before the hearing. Service by mail is effective if the pleadings are mailed at least 10 days before the hearing. Replies to supplemental pleadings shall be filed and personally served before 10:00 a.m., 2 court days before the hearing. Service by mail is effective if the replies are mailed at least 7 court days before the hearing.

If a party serves supplemental pleadings at least 15 days before the hearing, that party may reply to any responding papers. Responses to supplemental pleadings must be filed and served at least 5 court days before the hearing. Replies to responding papers must be filed and personally served by 10:00 a.m., 2 calendar days before the hearing.

The court may decline to consider any supplemental pleadings which do not appear to be the result of newly discovered evidence or facts which were not available when the original pleadings were filed, or where the supplemental pleadings were filed late to gain a tactical advantage.

In cases where a temporary restraining order or a protective order has been issued under either Family Code sections 240, 2040 (children, property and insurance), 4620 (disposable property), 6320 (Domestic Violence Prevention Act), or 7710 (Uniform Parentage Act), filing and service of the

moving and supporting papers must be in compliance with Family Code sections 242 and 243 (as amended July 5, 2000).

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.36****Form of Papers Presented For Filing**

Papers filed in support of a court hearing shall comply with the California Rules of Court, rule 201. After the initial filing, all pleadings shall bear the case number and the initials of the judicial officer to whom the case has been assigned. The date, time and department where the matter is to be heard also shall be designated on the first page underneath the case number and nature of the paper. Machine-produced copies of any Judicial Council forms may be submitted as originals provided they are identical in clarity and quality. Forms not meeting California Rules of Court, rule 201 may be rejected. Current adopted Judicial Council forms shall be used where appropriate.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003)

**Rule 5.37****Lodgments**

Exhibits accompanying a motion or order to show cause which exceed 10 pages shall be lodged rather than filed with the court. The provisions of the California Rules of Court, rule 319, apply. The evidentiary foundation for the exhibits shall be set forth in the appropriate declarations filed with the court. A notice of lodgment listing the documents must be filed and served on all parties, and a copy must be submitted with lodged material. Documents lodged with the court shall be tabbed or paginated to correlate to the notice of lodgment. Lodged documents will be stamped "received" by the court. Following the return of the lodged documents by the court, the party lodging them shall retain them until the applicable appeal period has expired. Due to limitations of storage space, counsel shall not lodge exhibits more than five court days prior to hearing, except by court order.

The clerk is authorized to refuse to accept lodged documents if a self-addressed envelope with sufficient postage for mailing or an attorney service pick-up slip is not submitted with them. If the clerk is persuaded to accept the documents despite non-compliance with the above, the risk of loss is on counsel and it is solely the responsibility of counsel to arrange for retrieval of the material at counsel's expense within five court days of the date of the hearing. Papers not retrieved within five court days may be disposed of without further notice.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001)

**Rule 5.38****Fee Waivers**

Applications and orders for waivers of court costs and fees shall be in the current form prescribed by the Judicial Council.

(Eff. 7/1/98; Renumbered 7/1/2001)

**Rule 5.39****Family Court Services Initial Screening Form**

When filing an Order to Show Cause at the Central Division court regarding custody or visitation, whether disputed or not, the moving party must also file a Family Court Services Initial Screening Form (SUPCT FCS-46).

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.40****Income and Expense Declarations**

A current income and expense declaration (and verification of income pursuant to rule 5.48) must be filed with the moving papers for any hearing involving financial issues (such as support, attorney's fees and costs). (See Chapter 6 for details.)

(Eff. 7/1/98; Rev. Jan 1, 2000; Renumbered 7/1/2001)

**Rule 5.41****Pleadings Not Timely Served**

If a party objects, the court will not consider pleadings not timely served. If an objection precludes consideration of untimely served pleadings, for good cause shown the court may continue the hearing.

In appropriate cases the court may consider an income and expense declaration not served in conformity with these rules. If the opposing party objects on the basis that the information contained in the income and expense declaration is a substantial surprise, the court may continue the hearing.

(Eff. 7/1/98; Renumbered 7/1/2001)

**Rule 5.42****Companion Matters**

A companion matter need not be served and filed as set forth in rule 5.35. An order shortening time for hearing is not required to join a companion matter with another currently-calendared matter provided the companion matter addresses only those issues reasonably related to the issues raised by the calendared OSC or motion. The companion matter shall be filed and served by 10:00 a.m., five court days before the original hearing.

Requests for attorneys' fees and standard restraining orders, may be addressed in the responsive declaration without filing a companion matter. The same is true for affirmative relief regarding modification of support, custody or visitation when the moving papers seek modification of support, custody or visitation.

Absent prior court order, an Order to Show Cause re Contempt shall not be filed as a companion matter and must be heard on a date before any other pending motions involving the same or similar subject matter. However, a request to determine arrears and/or for attorneys' fees and costs may be filed as a companion matter to an Order to Show Cause re Contempt for Failure to Pay Support.

(Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003)

**Rule 5.43****Reissuing Orders to Show Cause**

Except as provided to the contrary in Family Code section 3062, orders to show cause not timely served may be "reissued" by the clerk, provided the original matter was filed less than 30 days before reissuance is requested and the applicant files a completed form, "Application & Order for Reissuance of Order To Show Cause". A reissuance filed more than 30 days after the original filing requires a judicial officer's signature.

(Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Amended Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; Renumbered & Amended Eff. 7/1/98; Renumbered 7/1/2001; Rev. 1/1/2003)

**Rule 5.44****Post Judgment Service of Process**

Post judgment motions shall be served pursuant to Family Code section 215. Service of post judgment motions only on the responding party's attorney is insufficient.

(Adopted Eff. 1/1/92; Renumbered Eff. 4/1/95; Amended Eff. 1/1/96; Renumbered & Amended 7/1/98; Renumbered 7/1/2001)

**Rule 5.45****Hearings On Orders to Show Cause and Noticed Motions****A. Calendaring.**

The Hearing dates for Order to Show Cause (OSC) hearings are not available from the business office by telephone. However, the business office will advise as to the approximate setting dates. Preferred dates for hearings may be indicated to the business office on the messenger slip or by other memorandum addressed to the clerk. The memorandum should be attached to the accompanying pleadings. When temporary restraining orders (TRO's) are granted pending a hearing, the business office must calendar the hearing within 25 days of the filing date. Hearing dates for OSC's and noticed motions without TRO's will be set in the future to allow for proper notice. If no TRO's are requested and mediation at Family Court Services (FCS) is needed, the hearing should be set at least 10 court days after the FCS appointment. If TRO's are granted and mediation at FCS is needed, the hearing date must still be calendared within 25 days of the filing date, but the hearing, or the custody and visitation aspects of the hearing, will normally be continued if an FCS appointment is not available at least 5 court days before the hearing.

**B. Morning and Afternoon Calendars**

At the Central Division noticed motions and order to show cause matters are heard Monday, Tuesday and Wednesday mornings and Monday and Tuesday afternoons. The morning calendar is limited to matters which take no more than 20 minutes of court time, including presentation of the hearing and reading of the file by the court. All contempts, longer OSC's and noticed motions (those with time estimates of more than 20 minutes but less than 40 minutes) shall be set on the afternoon calendar. When counsel

is aware that a matter will take more than 20 minutes but less than 40 minutes, counsel shall request an afternoon setting at the time the OSC or motion is filed. This request shall be noted by counsel in the upper right-hand corner of the OSC or Notice of Motion form. Matters which require more than 40 minutes, including presentation of the hearing and reading of the file by the court, shall be specially set by the court either through ex parte application or at the time of the initially noticed hearing.

In North County, noticed motions and Order to Show Cause matters which take no more than 20 minutes of court time, including presentation of the hearing and reading of the file by the court are heard Monday, Tuesday and Wednesday mornings. Domestic violence and other noticed motions are heard Monday, Tuesday and Wednesday afternoons. Contempts are heard Wednesday afternoon. Long Orders to Show Cause are heard Thursdays and Fridays.

In East County, all OSC's and noticed motions (including contempts) are heard on Tuesday and Thursday mornings and afternoons. OSC's and noticed motions may be set on either the morning or the afternoon calendar regardless of the time estimate.

In South County, OSC's and noticed motions are heard Monday through Thursday mornings and afternoons.

The above schedules may be modified at the Court's discretion.

#### **C. Continuances**

Stipulated continuances of a noticed motion or an OSC (except contempts) shall be routinely granted by phone or in open court. The stipulated continuance may be made to any available court date. The request may be made by either counsel. Absent court approval, matters set on a morning calendar may only be continued to a morning calendar, and matters set on an afternoon calendar may only be continued to an afternoon calendar.

No more than three continuances shall be granted without court order and for good cause shown. If a case is not ready to proceed to hearing on the date established as a result of the third continuance, the court shall, absent good cause shown, take the matter off calendar. Upon a matter being taken off calendar as provided above, the court shall reserve jurisdiction to reset the matter for hearing upon ex parte application by the moving party. The court shall also reserve jurisdiction to issue the requested relief retroactive to the date the initial motion was filed. At the time of the ex parte application, the moving party shall submit suggested dates to the court on which the matter will be ready to proceed to hearing. Once reset, and except for emergencies, a hearing will only be continued for good cause shown by ex parte order obtained before the date of the reset hearing.

Temporary restraining orders will remain in effect during any continuance, absent a stipulation of the parties to the contrary. Whether the continuance is requested by telephone or in person, the Clerk's Office will inform the Sheriff's Office that the CLETS TRO's are to remain in effect pending the new date.

Continuances of OSC's re contempt must be requested in open court (with the citee present) or obtained by written stipulation including a signed consent by the citee to the continuance and a waiver of time to hear the contempt. The stipulation shall be filed with the court at or before the time set for the original hearing. If the citee does not appear, upon request a bench warrant will normally be issued and held until the new date to retain jurisdiction.

Stipulated phone continuances shall be directed to the family law calendar clerk for the department until 3:30 p.m. the court day before the scheduled hearing. On the day of the hearing, stipulated continuances may be obtained from the court clerk in the department before the calendar call. The court will also grant stipulated continuances at the time of the calendar call.

If custody or visitation are at issue and the Family Court Services report is not available at least 10 days before the hearing, the court will normally grant a continuance upon request of a party who has been prejudiced by the inability to review the report sufficiently in advance of the hearing.

#### **D. Calendar Calls**

Generally, the morning calendar is called at 9 a.m. and the afternoon calendar is called at 1:45 p.m. These times may be changed by the supervising judge, and notice thereof will be published in the legal newspapers in the county and posted in the affected courthouses.

The court will attempt to accommodate counsels' calendar conflicts upon reasonable request. Requests for calendar priority should be made at the calendar call.

All matters unanswered by 10 a.m. on the morning calendar or 3 p.m. on the afternoon calendar in the Central Division court will be placed off calendar unless counsel have previously informed the court of the reason that they will not be present at the calendar call, and, if engaged elsewhere, of where they are actually appearing. Counsel unable to appear at the calendar call shall give notice of that fact to opposing counsel at the earliest reasonable time.

At the time the calendar is called, it is the duty of counsel to give the court accurate time estimates for the presentation of the entire matter. Failure to do so may result in the hearing being interrupted, continued or ultimately concluded at the foot of the calendar.

Counsel are required to meet and confer before presentation of the case to determine which issues are settled, which issues are to be presented to the court as contested, and the total time estimate for their presentation. The conference must result in an identification of all contested issues to be presented to the court for resolution.

#### **E. Manner of Presentation**

Counsel shall present OSC's and motions in the following order:

1. Announce appearance;
2. Clearly state ALL contested issues;
3. Recite any stipulated matters for the approval of opposing counsel, the parties and the court; and

4. Briefly present argument on each contested issue including a specific recommended resolution.

Counsel shall not interrupt the opposing side's presentation, other than with valid evidentiary objections, and shall direct all remarks to the court.

Once the court has rendered its decision, counsel shall not attempt to reargue the case. It is, however, acceptable to question the court in order to clarify a ruling or correct an obvious mistake of fact.

Counsel are encouraged to ascertain whether the OSC judge intended the order issued at an initial OSC to preclude later application for *Epstein* credits and/or *Watts* charges.

#### **F. Chambers Conferences**

Chambers conferences may be held at the discretion of the judicial officer in each department. The purpose of a chambers conference is solely to discuss matters with the court which should not be set forth on the record in open court. These conferences will usually not be held until after the conclusion of other matters ready to be heard in open court. Chambers conferences shall not be used to rehearse OSC and motion presentations.

#### **G. Stipulation Forms**

Long and short stipulation forms are available in all family law departments. The court encourages the use of these forms in lieu of oral stipulations. After the form is completed, counsel should give the form to the clerk for immediate filing and distribution. Use of the stipulation forms will eliminate the need for the filing of a subsequent order. If counsel desires, however, a typed formal order may be prepared and filed after filing the form stipulation.

#### **H. Limitations on Evidence/Oral Testimony**

It is the policy of this court to consider only the papers filed with the court when granting or denying applications for orders. Argument shall be limited to evidence contained in declarations filed with the court and signed under penalty of perjury or reasonable inferences drawn therefrom. Except for contempt citations, oral testimony will generally not be received. In contempt hearings, the charging declaration (subject to evidentiary objections) may be received in evidence, provided the declarant is present in court and available for cross-examination. Other than an OSC re contempt, if any party wishes to present oral testimony, written declarations must still be filed in a timely manner. Written notice of the intent to present oral testimony shall be served on the opposing party at least five court days before the scheduled hearing. The notice shall state the name of the intended witnesses.

The written declarations shall be the direct testimony of the declarant. Oral testimony shall be limited to hostile third party witnesses or cross-examination on the contents of the written declarations and/or reasonable inferences drawn therefrom. Oral testimony may also include re-direct and rebuttal, if necessary. If the intended oral testimony will be cross-examination of the opposing party, a third party who submitted a written declaration on behalf of the opposing party, or a court-appointed expert witness, the party who wishes

to conduct the cross-examination shall set forth in a written declaration the reasons for requesting cross-examination, and that declaration shall accompany the notice of intent to present oral testimony.

Failure to give the required notice will generally result in a denial of the request for oral testimony. Even if such notice is given, the taking of oral testimony shall be left solely to the discretion of the court.

#### **I. Awards of Attorneys' Fees and Costs**

If liquid community assets exist, an award of attorneys' fees and costs will generally be made from this source. If no liquid community assets exist, the court will generally award attorneys' fees plus costs to a party who is unable to bear their own fees and costs. The court will require the repayment of a retainer where the party awarded attorneys' fees was compelled to borrow money to pay the retainer, and the community or the paying party has the ability to repay the loan. If attorneys' fees and costs are awarded on a monthly installment basis, the standard acceleration provisions upon default shall apply such that if any two payments are missed, the entire balance will immediately accelerate and become all due and payable.

When awarding attorneys' fees in support enforcement actions, including contempts, the court will be governed by Family Code section 3557.

Any time fees or costs are at issue, both parties shall submit a fully completed income and expense declaration. (See Chapter 6 for details.)

#### **J. Calendar Management**

Some family law motions and orders to show cause involve unusually complex issues of law and fact. This rule is intended to ensure that the court has adequate time to review lengthy papers and/or consider complex or convoluted issues or factual situations before scheduled hearing, and to allow hearings to proceed without undue delay. In all cases, however, the court will read all relevant pleadings before rendering its decision either by reading them prior to hearing, at the time of hearing, or by taking the matter under submission. In the interest of expediting hearings on complex issues of fact or law, counsel may request that the court "pre-read" specific documents in the court file by notifying the department's calendar clerk and all parties no later than 12 noon one court day before the hearing. The pre-read request shall identify all relevant documents filed by both sides. If the pre-read request identifies more than eight documents, counsel shall make arrangements with the calendar clerk for counsel to place yellow tags on the documents to be read. If opposing counsel objects to the request for the pre-read, opposing counsel shall notify the calendar clerk for the department of the specific objection. This will not, however, prevent the pre-read.

#### **K. Extra Copies of Pleadings**

Counsel shall bring an extra set of all relevant pleadings to the hearing. Due to last-minute filings and the volume of business, it is not uncommon for the court file to be incomplete.

(Adopted Eff. 1-1-89; Renumbered Eff. 1-1-89; Amended Eff. 1-1-92, Renumbered & Amended Eff.

4-1-95; Renumbered & Amended 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003)

## CHAPTER 6 DECLARATIONS OF DISCLOSURE, INCOME & EXPENSE DECLARATIONS, AND TAX RETURNS

### Rule 5.46

#### Declaration Of Disclosure

All preliminary Declarations of Disclosure ("DOD") shall be prepared and served in compliance with Family Code sections 2103 and 2104.

All final DOD's shall be prepared and served in compliance with Family Code section 2105 unless mutually waived in compliance with Family Code section 2105, subdivision (c).

Pursuant to Family Code section 2106, absent good cause, no judgment regarding the parties' property rights shall be entered without each party executing and serving their respective DOD and filing their respective Proof of Service of the DOD. "Good cause" can only be established by a declaration, signed under penalty of perjury, stating sufficient supporting facts.

(Adopted effective 1/1/89; Renumbered Effective 1/1/90; Amended Effective 1/1/92; Renumbered & Amended Effective 4/1/95; Renumbered & Amended 7/1/98; Renumbered & Rev. 7/1/2001)

### Rule 5.47

#### Income and Expense Declarations

A current income and expense declaration (and verification of income pursuant to rule 5.48) shall be filed with the moving papers for any hearing involving financial issues (such as support, attorney's fees and costs). An income and expense declaration is current if it is executed within 90 days of the hearing. Supplemental, updated or responsive income and expense declarations shall be served at least five court days before the hearing.

The income and expense declaration shall be printed on green paper and all portions of the form shall be completed. The gross income of a cohabitee or new spouse shall be set forth on the income and expense declaration and all cash and funds on deposit shall be fully disclosed.

When attorney's fees or costs are requested the court requires actual amounts be entered on the lines "Cash and checking accounts" and "Savings, credit union, certificates of deposit, and money market accounts." The box for attorney's fees paid to date must include all monies held in trust by the attorney for fees and costs, and fees owed to date may not include fees that have been paid. Insertion of the word "unknown" does not constitute compliance with this rule.

(Eff. 7/1/98; Renumbered & Rev. 7/1/2001, Rev. 1/1/2004)

### Rule 5.48

#### Attachments to Income and Expense Declaration

To verify current income parties must serve and file copies of the following documents with their income and expense declaration as follows:

**For Salaried Employees:** The three most recent pay stubs showing all forms of year-to-date income.

**For self-employed individuals (including independent contractors):** A schedule reflecting all compensation received by that party year-to-date, the prior calendar year's and the most recent financial statement, profit-and-loss statement or other documents which reflect the prior year, current period and year-to-date income.

**For employees who are shareholders in a closely-held corporation:** The three most recent pay stubs plus a schedule reflecting all compensation received by that party for the prior year and year-to-date; the prior year's and the most recent financial statement, profit-and-loss statement or other documents which reflect the prior year, current period and year-to-date income.

**For partnership income:** A schedule reflecting all compensation received by that party year-to-date, the prior calendar year's and the most recent financial statement, profit-and-loss statement or other documents which reflect the prior year, current period and year-to-date income.

**For rental income:** Copies of statements, summaries or other documents reflecting all rental receipts, deposits, disbursements and expenses for the prior calendar year and for all periods year-to-date.

**For dividend income, interest income or other unearned income:** A copy of all documentation evidencing all funds on deposit, shares of stock, bonds, or other income-producing assets owned by that party, and the rate of return currently being paid thereon, and any income derived therefrom during the prior calendar year and the current year-to-date. (Eff. 7/1/98; Renumbered 7/1/2001)

### Rule 5.49

#### Disclosure of Income Tax Returns and Forms

When child, family or spousal support is requested a party may require the opposing party to provide income tax returns pursuant to Family Code section 3552. A request for tax returns and forms must be made no later than 10:00 a.m. 5 court days before the hearing. The documents must be provided to opposing counsel no later than 10:00 a.m. 2 court days before the hearing.

Documents served pursuant to this rule must not be filed with the court except as provided by Family Code section 3552. No party may file any income tax returns, schedules or forms with the court unless that party signed them.

The categories of income and documents that may be requested are:

**1.** All parties: A copy of the face sheet of the party's IRS 1040 or 1040A form for the last year in which a federal return was filed.

**2.** Hourly or salaried employees: A copy of the party's W-2 form for the prior year.



3. For self-employment or independent contractor income: The Schedule C and all depreciation schedules of that party's IRS 1040 or 1040A form for the last year in which a Federal return was filed.

4. An owner or owner/employee of a corporation: Copies of the Schedule 1120 or 1120S and all depreciation schedules of that party's IRS 1040 or 1040A form for the last year in which a federal return has been filed.

5. An individual with income derived from a partnership: The K-1 most recent statement(s) and IRS form 1065 for each partnership for the last year in which a federal return was filed.

6. The recipient of rental income shall serve a copy of the Schedule E form attached to that party's IRS 1040 or 1040A form and all schedules of depreciation for the last year in which a federal return was filed.

7. The recipient of dividend or interest income shall serve all 1099 forms for the prior year and Schedule B of that party's IRS 1040 or 1040A form for the last year in which a federal return was filed.

(Eff. 7/1/98; Renumbered 7/1/2001)

#### **Rule 5.50**

##### **Privileges Retained**

The above rules concerning attachments to income and expense declarations and production of income tax documents are subject to any and all privileges held by a party or any third party whose privilege for non-disclosure would be violated by a party complying with these rules.

(Adopted. Eff. 1/1/89; Renumbered Eff. 1/1/90; Amended Eff. 7/1/91; Renumbered & Amended Eff. 4/1/95; Renumbered & Amended 7/1/98; Renumbered 7/1/2001)

## **CHAPTER 7 SHORT CAUSE TRIALS**

#### **Rule 5.51**

##### **Short Cause Trials**

##### **A. Time Limit**

Short cause trials may not exceed three hours including time for the judge to review the file, read the trial briefs, conduct chambers conferences and issue a ruling. Cases that exceed the three-hour time limit may be mistried by the trial judge and set for a case management conference with a revised time estimate.

##### **B. Calendaring**

Generally short cause trials are heard Fridays in the Central Division; Fridays mornings in South County; Mondays in East County; and Thursdays and Fridays in North County.

No more than three continuances shall be granted without court order and for good cause shown. If a case is not ready to proceed to trial on the date established as a result of the third continuance, the court shall, absent good cause shown, take the matter off calendar. Upon a matter being taken off calendar as provided above, the court shall reserve jurisdiction

to reset the matter for trial upon ex parte application by the moving party.

##### **C. Temporary Judges**

Occasionally, temporary judges will be available to hear short cause cases when the assigned judicial officer is absent. These temporary judges will be experienced family law attorneys who have been approved by the supervising judge. If a case is assigned to a temporary judge, litigants will be asked by the clerk in the assigned trial department to sign a stipulation consenting to that temporary judge. If consent to a temporary judge is not obtained, the case shall be referred to the supervising judge for assignment that day to an available judicial officer or continued to a convenient date on the originally assigned judicial officer's calendar.

##### **D. Meet and Confer Requirement**

Counsel shall meet and confer either in person or by phone at least five court days before the day of trial to resolve as many issues as possible and to specify those matters to be litigated. Results of the conference shall be included in the Short Cause Trial Statement. Failure to comply with these requirements shall subject offending counsel to monetary sanctions.

##### **E. Custody and/or Visitation Issues**

If custody or visitation is in issue at the time of trial, the parties shall meet with Family Court Services before trial. This meeting shall be scheduled sufficiently in advance of trial to allow time for the counselor to prepare and file a recommendation, at least 10 calendar days before the scheduled trial date.

##### **F. Mandatory Short Cause Trial Statements**

Counsel shall prepare a short cause trial statement and, if financial matters are at issue, an income and expense declaration. Copies of these documents must be personally served on opposing counsel no later than 2 p.m. the Wednesday before trial. The originals of the trial statement and income and expense declaration shall be filed with the clerk in the trial department on the day of trial immediately upon counsel's arrival in the trial department. Every short cause trial statement shall be in the form of Appendix D. No other format will be accepted for filing. Failure to timely serve and file the trial statement and income and expense declaration shall subject the offending attorney to sanctions.

This rule shall not apply to "long" OSC's heard on the short cause trial calendar.

##### **G. Legal Points and Authorities**

When a case involves complex or novel points of law the parties shall file legal points and authorities along with their short cause trial statement.

##### **H. Division of Furniture, Furnishings and Personal Effects**

If the parties have been unable to divide their furniture, furnishings and personal effects by agreement, the parties shall jointly prepare a combined list of these items at the time they meet and confer. This list shall be attached to both parties' short cause trial statements. The list shall include a description of each item, and opposite that item each party's position concerning value, character (separate or community) and the proposed disposition of the asset.

**I. Epstein Credit Claims**

If a party is claiming reimbursement for payment of community debts from separate funds following separation, that party must fully document these claims by attaching to the Short Cause Trial Statement all documents to be introduced into evidence on this issue at trial. Absent court order obtained before trial, or for other good cause shown, no other documentary evidence in support of this claim may be introduced or considered by the trial court. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

**J. Family Code Section 2640 Reimbursement Claims**

A party claiming reimbursement pursuant to Family Code section 2640 shall attach to the Short Cause Trial Statement any documentary evidence which that party intends to introduce at the time of trial to substantiate the claim(s). This includes canceled checks, bank statements, title documents, escrow documents, etc. Absent court order obtained before trial, no other documentary evidence in support of this claim may be introduced or considered by the trial court. This rule is not intended to preclude testimony explaining attached documentation or testimony when no documentation is available.

**K. Reference to Special Master**

Failure to meet the requirements set forth in sections H., I. and J. above may result in those issues being referred to a Special Master pursuant to Code of Civil Procedure section 639. Any costs relating to proceedings before the Special Master will be borne by one or both of the parties as ordered by the court.

**L. Valuation of Vehicles**

Current *Kelley Blue Book* values for all vehicles will be accepted into evidence without further foundation. There will be a rebuttable presumption that the value of the vehicle in question is midway between wholesale and retail with appropriate adjustments for extras and mileage. Copies of the relevant *Kelley Blue Book* pages for all vehicles whose value is in issue shall be attached to both parties' mandatory short cause trial statements.

(Adopted Eff. 1-1-89; Renumbered Eff. 1-1-90; Amended Eff. 7-1-91; Renumbered & Amended 1-1-92; Renumbered & Amended Eff. 4-1-95; Renumbered & Amended Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

## CHAPTER 8 LONG CAUSE TRIALS

**Rule 5.52****Long Cause Trials**

A long cause trial is defined as any trial estimated as requiring more than three hours of court time.

**A. Trial Setting**

If a trial date was not set at the case management conference, and the case does not settle at the mandatory settlement conference, the case will be referred to the assigned judge to set a trial date.

Inaccurate time estimates may result in a mistrial and sanctions. Where necessitated by the court's calendar, the assigned judge may make arrangements with the supervising judge to assign the case to another department for trial.

Long cause trials in the Central Division are generally conducted on Thursdays. Long cause trials in North County, East County and South County are not heard on any particular day, and must be specially set by the assigned judicial officer.

If the court is unable to hear the case on the trial date, it will trail the case and notify the parties as soon as possible when their matter can be heard.

**B. Continuances**

Trials may only be continued by the trial judge. Continuances will only be granted in extraordinary circumstances (which do not include a change of counsel).

**C. Trial Preparation**

The rules governing trial preparation Downtown are set forth in Appendix E.

**D. Trial Briefs**

Trial briefs are required, but settlement briefs may be used to meet this requirement by changing the title. If a case involves complex or novel points of law, the trial brief shall include legal points and authorities. The format of the trial brief is left to the attorney's discretion. Trial briefs shall be exchanged as set forth in Appendix E.

(Eff. 7/1/98; Renumbered 7/1/2001, Rev. 1/1/2004)

## CHAPTER 9 FAMILY SUPPORT DIVISION MATTERS

**Rule 5.53****Calendaring**

All matters involving the Department of Child Support Services (formerly the District Attorney's Office) shall be set and heard on the Family Support Division (FSD) Calendar. All Domestic matters involving parentage determinations or support issues where the Department of Child Support Services is involved, filed with the County of San Diego, shall be heard on a Family Support Calendar unless the Department of Child Support Services has provided a written waiver. Written notice to the Department of Child Support Services is required in any proceeding where there has been previous Department of Child Support Services (formerly District Attorney's Office) involvement or one or both of the parties are currently receiving, have received, or intend to apply for any form of public assistance unless not required per Family Code section 17404(e)(4). Such notice shall be in accordance with Code of Civil Procedure section 1005(a) and served on the Department of Child Support Services at 220 West Broadway, Room 5003, San Diego, California 92101.

The Family Support Division Calendar is called at 9 a.m. and 1:45 p.m. Monday through Friday. Special settings and short cause trials in the Downtown location are scheduled each Friday at 1:45 p.m.

(Eff. 7/1/98; Renumbered 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

**Rule 5.54****Orders**

All orders involving the Department of Child Support Services shall include the following provisions:

1. All payments shall be made by wage assignment payable to the Department of Child Support Services.

2. The payor shall make all payments directly to the Office of the Department of Child Support Services unless payments are fully collected by wage assignment;

3. The payor must provide the Department of Child Support Services with their date of birth, social security number, income, employer's name, employer's address and residential address;

4. The payor must notify the Department of Child Support Services in writing within 48 hours of any change of address, income or employment;

5. The payor shall provide health insurance for the child/children in the action, if available at no or reasonable cost through their employment; and

6. The payor shall provide documentation showing proof of health insurance coverage to the Department of Child Support Services within 48 hours.

(Eff. 7/1/98; Renumbered 7/1/2001; Rev. 1/1/2003)

**Rule 5.55****Custody/Visitation Matters**

The parties may use the Department of Child Support Services' case number to litigate issues of custody and visitation provided there is a judgment granted in the case. Matters involving issues of custody/visitation are to be filed and heard in the courts of proper venue, i.e. case numbers beginning with:

Case Designation:                      To be heard at:

D Central Division - 1501 Sixth Avenue, San Diego, CA 92101

DN North County - 325 South Melrose, Vista, CA 92081

DE East County - 250 East Main Street, El Cajon, CA 92020

DS South County - 500 Third Avenue, Chula Vista, CA 91910

DF Appropriate division depending on the residences of the children and parties.

When an order to show cause involving custody or visitation is filed in a case involving the Department of Child Support Services, the filing clerk in the appropriate venue is to provide hearing dates as follows:

1. Hearing Date for Family Court Services.

2. Court hearing date for the issues of custody/visitation.

3. Family Support Department hearing date.

OSC's and motions involving custody or visitation must be served on all appropriate parties in accordance with Code of Civil Procedure section 1005, subdivision (b).

(Eff. 7/1/98; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

**Rule 5.56****Conduct of Hearings & Trials**

Trials and hearings on the FSD calendar are governed by the rules and readiness procedures as set forth on Appendix F.

(Eff. 7/1/98; Renumbered 7/1/2001)

**Rule 5.57****Time for Ex Parte Matters**

Ex Parte matters will be heard on Monday through Friday from 8:30 a.m. to 8:55 a.m. and Monday through Thursday from 1:30 p.m. to 1:45 p.m. All other requirements as set forth in Chapter 5 as to notice, meet and confer, and the preparation of an ex parte application form and proposed order are to apply.

(Eff. 7/1/98; Renumbered 7/1/2001)

## CHAPTER 10 FAMILY COURT SERVICES

**Rule 5.58****Mediation Required**

Before a hearing on any disputed issue of custody or visitation, the parties shall participate in mediation either with a counselor at Family Court Services (FCS) of the Superior Court (non-confidential mediation) or a private mediator retained by the parties. Upon a showing of good cause, the court may order that the parties and their minor children undergo a psychological evaluation to assist in adjudication.

(Eff. 7/1/98; Renumbered 7/1/2001, amended eff. 1/1/2003)

**Rule 5.59****Use of Private Mediator**

The parties may stipulate to use a private mediator or the court may order the use of a private mediator. Unless otherwise stipulated by the parties or ordered by the court, private mediation in San Diego County is understood to mean a non-confidential process. If the parties do not reach an agreement and there is no stipulation for confidentiality, the mediator shall submit a recommendation to the court and reasons for the recommendation. Rules 5.60B, and 5.61A, B, D-G shall apply to the use of and recommendations of a private mediator.

If the private mediator does not submit a recommendation to the court and reasons for the recommendation, the parties must schedule and participate in a meeting with FCS before the court hearing. FCS shall then prepare and submit a

recommendation and reasons for the recommendation to the court. This may necessitate a continuance of the hearing.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 5.60****Mediation at Family Court Services**

The parties' attorneys do not participate in FCS mediation. If the parties reach an agreement during mediation, it will be submitted to their attorneys before the OSC hearing. If the attorneys approve of the parties' agreement, they will submit the agreement to the court on the date of the OSC hearing for the court's approval and adoption as an order.

If the parties are unable to resolve issues of custody or visitation by mediation, the FCS counselor will submit a written recommendation and reasons for the recommendation to the parties' attorneys and the court. The court will consider the recommendation at the time of the hearing. A party has the right to cross-examine the counselor during the hearing.

If mediation is self-initiated and there is no formal action pending, the parties may develop a stipulated custody/visitation order. If the parties are represented by attorneys, their attorneys must approve the stipulated custody/visitation order before it is submitted to the court for signature.

**A. Location of Family Court Services.**

The locations and phone numbers of Family Court Services are contained in Appendix G.

**B. Initiating Family Court Service Mediation.**

If an OSC/motion requests a court order concerning custody/visitation, the moving party, or their attorney, must file a completed FCS Initial Screening form with the moving papers. If FCS mediation appears necessary, the business office shall assign both a hearing date and an FCS date and insert both dates on the papers.

If the moving papers contain no FCS date and the responding party determines a custody or visitation dispute exists, the responding party is responsible for scheduling the earliest possible FCS mediation date and promptly notifying the moving party of the time and date for the meeting.

**C. Unanticipated Issues Arising at Hearing.**

If unanticipated child custody or visitation issues appear for the first time at the hearing, the court may make a temporary custody/visitation order; however, the parties must meet with a FCS counselor before the court makes a final custody/visitation order. If necessary and appropriate, the court may order one or both parties to pay an additional filing fee as indicated in rule 5.60J below. When possible, the parties will be immediately referred to FCS, and the hearing trailed until mediation has been completed. If mediation cannot be completed on that day, the hearing may go forward on other issues, but custody and visitation issues will not be heard until after the FCS meeting.

**D. Resolution of Dispute Before Mediation; Cancellation or Rescheduling of Appointment.**

Attorneys are encouraged to try to resolve child custody/visitation disputes with the opposing attorney before mediation and the OSC hearing. If the

disputed custody/visitation issue is resolved prior to Family Court Service mediation, the attorney who scheduled the mediation shall promptly notify the opposing attorney and call FCS to cancel the appointment.

**E. Submitting Mediation Data Sheet and Declarations.**

At or before the mediation session, each party must submit a completed Family Court Services Mediation Data Sheet to the office where counseling is scheduled. No attachments shall be permitted to the Mediation Data Sheet. Blank Mediation Data Sheets may be obtained from either the business office or any FCS office.

Prior to the mediation conference, the parties, or their attorneys, may provide FCS with declarations signed under penalty of perjury. Absent court order to the contrary, FCS will not accept these declarations unless they have been served on the opposing party or their attorney and a Proof of Service is attached. The following constitutes proper service: if personally served, at least two court days before the mediation conference; or if served by mail, five calendar days if mailed within the State of California, 10 calendar days if mailed outside California but within the continental United States, or 20 calendar days if mailed outside the continental United States.

**F. Consultation Between Attorneys and Counselor.**

If both parties are represented by attorneys and the attorneys want to confer with the counselor prior to the mediation conference, they may schedule a time that is agreeable to the attorneys and the counselor. The counselor will not meet with one attorney unless the opposing attorney is available in person or by telephone. The counselor may have ex parte contact with either attorney or party at any time in the mediation and/or recommendation process to obtain necessary information. Neither party or attorney may contact the counselor, except upon request of the counselor, unless the other party or attorney is present in person or by phone.

If one attorney refuses or is unwilling to meet with the counselor, the other attorney may meet individually with the counselor by court order upon ex parte application.

**G. Telephonic Conference.**

If an in-person meeting with a counselor at FCS is not feasible, such as when one party resides outside the County of San Diego, a conference will be conducted by telephone. Counsel shall advise the FCS calendar clerk of the need for telephonic mediation and provide appropriate telephone numbers.

The Family Court counselor will call the telephone participant collect at the time of the conference. It is the attorney's responsibility to advise his or her client to accept this collect call. A Mediation Data Sheet shall be submitted by each party even though the meeting is to be conducted telephonically.

**H. Initial Meeting.**

Other than a statutorily authorized support person, only the parents shall attend the initial

mediation conference, unless requested by the court or FCS counselor. If the counselor wants to interview the child(ren), new mates or other parties, the counselor will arrange for such interviews after the initial meeting.

### **I. Request for Change of Counselor.**

#### **1. No Peremptory Challenges.**

A peremptory challenge of a counselor is not allowed. However, a party may request a change of counselor by following these rules.

#### **2. Timing of Request for Change of Counselor.**

A party must request a change of counselor as soon as a sufficient basis for a change is known. No change of counselor requests will be granted unless there is a substantial showing that the counselor is biased/prejudiced against one of the parties or unable to render a fair and impartial recommendation.

If the parties file a subsequent court proceeding requiring Family Court Service mediation, either party may request a new counselor when the mediation appointment is set.

#### **3. Form of Request, Standards for Review.**

A party wanting a change of counselor shall send a written request to the director of FCS and serve a copy on the opposing party or their attorney. The director shall either review the request or delegate it to a supervisor. The director/supervisor may schedule a meeting with the attorneys and counselor to discuss how the case was handled. The review may be based upon the following criteria:

1. Will the parties' feelings and resistance become a major issue?
2. Is this an instance of either party counselor shopping or manipulating the system?
3. Was the counselor fair in receiving input from the parties?
4. Did the counselor focus on the best interests of the child/children and the parties' respective abilities to meet those needs?
5. Did anything occur to cause the party to feel the counselor was not being objective?
6. Was the counselor biased/prejudiced against one of the parties or otherwise unable to render a fair and impartial recommendation?

A party wanting a change of counselor should review Family Code sections 270 through 274 before making a request for a change of counselor. The parties are reminded of their right to question the counselor in court and argue for or against any FCS recommendation.

After the review is completed, the director/supervisor shall advise the parties of the decision in writing.

### **J. Extended Family Court Services Mediation, Investigation.**

If the court orders FCS to perform a custody investigation or extended mediation, the parties shall bear the cost of such services at the prevailing hourly

rate. The court will require one or both parties to pay an initial nonrefundable deposit set by the court.

The court shall make the order on form SUPCT FCS-6. The parties shall take a copy of the order to FCS when they report for in-take. Failure to complete the intake information will delay completion of the evaluation. Rules 5.61E, F, G, and K shall apply to extended FCS mediation.

At the conclusion of the extended mediation, the mediator shall make a written recommendation to the court. Within the mediation, relatively healthy parents with relatively few concerns regarding the other parent may enter into agreements on any of the issues. As to those issues raised to which they are unable to agree, the parents will be told that the mediator will make a recommendation to the court on the unresolved issues, with comment on the parents' support for or opposition to the recommendations, the best interests of the child(ren), and other information available to the mediator. The recommendations shall be submitted in a written report.

(Amended Eff. 1-1-96; Renumbered & Amended 7/1/98, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003, Rev. 1/1/2004)

### **Rule 5.61**

#### **Custody Evaluations**

A custody evaluation is a process by which a mental health professional uses appropriate professional techniques to gather information. The mental health professional uses this information to formulate a recommendation that is submitted to the court.

Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of child with regard to disputed custody and visitation issues. California Rules of Court, rule 1257.3, which requires local courts to implement this rule, affects both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032.

The court may order either a partial evaluation or a full evaluation.

A "partial evaluation, investigation or assessment" is an examination of the health, safety, welfare, and best interest of the child. It is limited by court order in either time or scope. A partial evaluation may address a single issue, such as: the level of the alleged substance abuse, domestic violence, mental instability/illness of a parent; with whom is the child most closely bonded; which parent is most likely to facilitate a positive and meaningful relationship between the child and the other parent; the child's preference and basis therefore; the effect upon the child in a "move away" situation. Partial evaluations shall include contact with both parents to obtain information regarding the referring issue or question.

A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

"Evaluation," "investigation," and "assessment" are synonymous terms as used in this rule.

All evaluations shall include those requirements set forth in the California Rules of Court, rule 1257.3(e).

**A. Requirement of a Court Order.**

The court, on its own motion, may order an evaluation. An evaluation may be requested by Family Court Services of the Superior Court following mediation/extended mediation. Family Court Services shall recommend either a "partial" or a "full" evaluation and, in the event a partial evaluation is requested, may make recommendations as to the referring issue or question.

The parties, whether unrepresented or through counsel, may stipulate that the issues of custody and visitation shall be referred for an evaluation prior to or in addition to other recommendations made by Family Court Services.

Nothing herein shall be construed to prevent the evaluator from contacting all counsel and/or parties when it appears to the evaluator that new and/or additional information is being provided which causes the evaluator to recommend a different level of evaluation.

The court can order a custody evaluation on its own motion, pursuant to a noticed motion, or by stipulation of the parties approved by the court. The court may require the child(ren) or other persons relevant to a determination of custody and visitation issues to participate in any of these processes.

A formal order shall be jointly drafted by counsel for the parties, or the litigant(s) if unrepresented, setting forth the purpose and scope of the evaluation; identifying the referring issues or questions; identifying the evaluator; listing the types of documents, correspondence and other things to be provided to the evaluator by counsel or litigant, copying all other parties or counsel in accordance with rule 5.61E; establishing payment plan for the evaluator's services; setting a commencement date for evaluation and the probable duration thereof; and such other matters as the court deems appropriate. The court shall instruct counsel or the litigant to provide copies of the order to the evaluator, all counsel or litigants, and the Family Court Services mediator.

**B. Selection of Evaluator; Request for Change of Evaluator.**

The parties may stipulate to the selection of an evaluator subject to the evaluator being approved by the court.

Evaluators shall meet the qualifications, training and continuing education requirements of Family Code sections 1815, 1816, and 3111, and the California Rules of Court rule 1257.3(h), and shall be required to acknowledge that they are so qualified and trained.

All evaluators appointed pursuant to Evidence Code section 730 (Appointment of Expert by Court) under this rule shall be protected under Civil Code section 47 (Privileged Publications or Broadcasts) acting in the proper discharge of their official duty as appointed by this court for communications made,

and shall be granted immunity from prosecution so long as he/she is acting within the judicial proceedings, for the appointment, or in any other official proceedings authorized by the court or law, to achieve the objects of the litigation and in connection with or in a manner logically related to the litigation and the underlying action.

If the court appoints an evaluator on its own motion, or upon motion when the parties are unable to agree on an evaluator, a party may request a change of evaluator. Requests for a change of evaluator must be made within five days of receiving written notification of the court-appointed evaluator assigned to the case. No peremptory challenges of an evaluator are allowed. Requests for a change of an evaluator made after this 5 day period will not be granted unless there is a substantial showing that the evaluator is biased/prejudiced against one of the parties, or otherwise unable to render a fair and impartial evaluation. The court shall consider the timeliness of the request.

Evaluators shall be allowed to petition the court to withdraw from a case, for good cause, in a writing directed to the judicial officer to whom the case has been assigned, with copies to counsel or parties. A hearing shall be scheduled, if requested by counsel or parties, within fifteen days of the mailing of the request, or as deemed necessary by the judicial officer. The evaluator need not be present unless directed by the court. Any complaints regarding the evaluator's performance shall be directed to the appropriate licensing/regulatory board.

**C. Request for Information from Evaluator.**

Before a non-County employee is appointed as an evaluator, upon request, that person shall provide the parties, or their attorneys with the following information:

1. A curriculum vitae; and

2. The names of at least three attorneys who have worked with them in connection with previous evaluations or three mental health professionals who are familiar with their work.

**D. Payment of Costs.**

When a private mediation or evaluation is ordered by the court, the issues of custody and/or visitation will be set for hearing after the anticipated completion of the mediation or evaluation. Generally, the court will initially order either or both parties to advance the mediation or evaluation costs, and reserve jurisdiction to reallocate the costs at the subsequent hearing. If the court reallocates the costs, it shall use Family Code sections 270 through 272 as guidelines.

**E. Exchange of Information.**

If either party or their attorney wishes to submit any form of information to an evaluator or mediator for consideration during private mediation or evaluation, he or she shall submit the information to the evaluator or mediator with a cover letter describing or itemizing the materials provided. This cover letter shall clearly state that the information has also been sent to the opposing counsel and/or the unrepresented litigant. The mediator or evaluator shall not review the enclosed information unless it has

been sent to the opposing counsel or unrepresented litigant. If the information to be reviewed by the mediator or evaluator is a tape recording; video cassette; movie film; personal diary; or journal of the other party, that item must be delivered to the opposing counsel or unrepresented litigant at least 7 calendar days before submitting the item to the evaluator or mediator. If the information is an audio recording it shall be accompanied by a written transcript of the recording. The mediator or evaluator shall immediately return any submitted information that was not sent to the opposing counsel.

**F. Consultation Between Attorneys and Evaluator.**

If both parties are represented by attorneys and the attorneys want to confer with the evaluator, they may schedule a time that is agreeable to the attorneys and the evaluator. The evaluator will not meet with one attorney unless the opposing attorney is available in person or by telephone. The evaluator may have ex parte contact with either attorney or party at any time in the evaluation process to obtain necessary information. If, during the course of the evaluation, a party by oral communications with the evaluator raises issues or allegations which can influence the evaluation, the evaluator shall give the other party an opportunity to respond before completing his or her report.

If one attorney refuses or is unwilling to meet with the evaluator, the other attorney may meet individually with the evaluator by court order upon ex parte application.

**G. Information from Children.**

If a child provides information to a mediator or evaluator, there is no guarantee the information will be kept confidential.

**H. Involvement of Child in Process.**

A child seen with one parent shall also be seen with the other parent unless there is a court order stating otherwise or, in an unusual case, the evaluator determines that such observation is unnecessary or not in the best interest of the child. The mediator or evaluator has discretion to determine the number of interviews and amount of time spent with each parent-child combination and whether siblings should be interviewed separately or jointly.

**I. Recommendation by Evaluator or Mediator.**

The mediator or evaluator's written recommendation will be considered by the court at the time of the hearing, subject to a party's right to cross-examine the mediator or evaluator.

Unless both parents participated in the evaluation, or there is a court order in this regard, the mediator or evaluator shall not make recommendations regarding custody and/or visitation. Any recommendations made without both parents' participation or a court order shall be given little weight by the court and FCS.

This rule does not prevent an evaluator from seeing only one parent in order to give an opinion or assessment regarding a particular aspect of the case or to resolve questions related to that parent, provided the opinion or assessment does not go to the ultimate

issue of which parent should have primary physical custody of the child(ren) or a parent's timeshare. However, the evaluator shall have contact with the other parent regarding the referring issue or question.

A copy of the report shall be released simultaneously to counsel for all parties (or litigants, if unrepresented) and to Family Court Services. If the parties have so stipulated at the outset of the evaluation, the parties may read the entire report and/or supporting information and test results but may not have a copy. Relevant portions of the information and test results regarding a party may be provided to the party's therapist upon written request.

Unless ordered to the contrary, the written report of the evaluator shall be lodged with the court and shall be admitted without further foundation. Either party may call the evaluator, at that party's expense, to examine him/her on the report and/or its recommendations.

If requested by subpoena, the underlying data, including test results and all written correspondence or documentation upon which the evaluator relied, will be produced. The party seeking the underlying data shall be solely responsible for all copy costs. However, any other party to the action shall be provided with a copy of same, upon written request. The requesting party shall be responsible for the reasonable costs of copying the documentation.

To the extent some documents within the control of the evaluator are privileged, those documents cannot be released or copied, except upon a specific court order.

**J. Sealing Reports, Filing Recommendation.**

Upon the request of either party, counsel for the child, or FCS, the court may consider sealing an FCS report.

All reports submitted by other mental health professionals shall be sealed, with the exception that the recommendation made by the evaluator shall be separated from the report and included in the court file.

**K. Confidentiality of Reports.**

An evaluation report shall be confidential and unavailable to any person except the court, the parties, their attorneys, their experts and any person to whom the court expressly grants access by written order made with prior notice to all parties.

**L. Persons Entitled to Evaluation Report; Prohibition Against Disclosure.**

Absent a court order to the contrary, minors shall not have access to the evaluation report. Unless otherwise ordered by the court, copies of the evaluation report shall be provided to the attorneys.

Anyone receiving the evaluator's report shall not give copies of, or parts of, the report to anyone who is not assisting in the preparation of the case. These reports usually contain very sensitive information and shall not be used to cause unnecessary embarrassment or harm to the parties but shall be handled in a responsible, confidential manner for purposes limited to the litigation.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 1/1/2003)

## CHAPTER 11 JUDGMENTS AND ORDERS

### Rule 5.62

#### **Judgment by Default or Uncontested Hearing**

A dissolution or legal separation may proceed by way of default or stipulation. The judgment is obtained by testimony at a default prove-up or uncontested hearing, or by stipulation and/or affidavit pursuant to Family Code section 2336.

To obtain entry of default the Petitioner must complete and file a proof of service of preliminary declaration of disclosure, a Request to Enter Default, and a stamped envelope bearing sufficient postage addressed to the spouse who has defaulted, with the address of the court clerk as the return address. After default is entered the Petitioner may apply to the court for the relief sought in the Petition by filing an original and two copies of a judgment packet. A judgment packet must contain the following documents: Declaration for Default or Uncontested Dissolution or Legal Separation, Judgment (Family Law) with or without a marital settlement agreement, Notice of Entry of Judgment and envelopes (with the court's address as the return address), stamped and addressed to each party.

If a default judgment is submitted without a marital settlement agreement, the court will schedule a default prove-up hearing with notice to petitioner.

If a default judgment is submitted with a marital settlement agreement, the judgment package must also include a Declaration Regarding Service of Final Declaration of Disclosure from each party unless waived consistent with state law (see Family Code section 2105). If parties did not exchange final Declaration of Disclosures, the parties must submit separate waivers under penalty of perjury or declare in open court. A waiver included in a marital settlement agreement is not sufficient. Respondent's signature on the marital settlement agreement must be notarized.

If the proposed uncontested judgment is not a stipulated judgment and includes division of property, a fully completed property declaration, including values, must be filed. The court cannot divide any assets or debts that are not listed on the petition or property declarations served on respondent.

If the proposed uncontested judgment is not a stipulated judgment and includes provisions for child support, spousal support or a waiver thereof, attorney's fees or costs, the moving party must also file a current income and expense declaration. Neither child nor spousal support will be granted unless the moving party sets forth an estimate of the other party's income in the income and expense declaration. If the moving party does not know the other party's present income this requirement may be met by evidence of the other party's ability to earn, work history or other relevant facts.

Requests for a default in a nullity action must be accompanied by a declaration setting forth the factual basis for the request.

Stipulated judgments in cases which are not proceeding by default must contain the following waivers:

1. the matter may proceed on the default or uncontested calendar before a judge pro tem; and
  2. the parties waive their rights to notice of trial, a statement of decision, to move for a new trial, and to appeal; and
  3. separate waivers under penalty of perjury if parties did not exchange final Declaration of Disclosures or declare in open court.
- (Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; Renumbered & Amended Eff. 7/1/98; Renumbered 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

### Rule 5.63

#### **Preparation of Orders and Judgments**

Unless otherwise ordered by the court, counsel for the moving party shall prepare a formal order or judgment. Orders after hearing shall be prepared on brown paper and judgments shall be on pink paper. The order or judgment shall be prepared within 10 calendar days of the hearing, unless a transcript has been ordered within five calendar days of the hearing and paid for in a timely manner, in which case the order or judgment shall be prepared within seven calendar days of receipt of the transcript. The order or judgment shall be prepared so that at least two lines of text appear on the page upon which the judge's signature is affixed. No text may appear after the judge's signature.

The party preparing the order or judgment shall send it to the opposing side for approval as to form and content unless the court authorizes the preparer to submit it directly to the court. The recipient shall have 10 calendar days from date of mailing to review the order and, either sign it as prepared, or notify the proponent in writing of objections to its content. If the parties cannot agree on the language of the order, then within 45 days of the hearing or trial either party may submit the proposed order with a copy of the transcript of the recited order and any written objections by the other party to the judicial officer who made the ruling.

If the responding party fails to timely approve or object to the order or judgment the party who prepared the order shall send a second letter stating that he or she will submit the order or judgment as drafted to the court for signature if no written response to the order is received within five calendar days of the date of the letter. If there is no written response to the second letter, the party preparing the order may transmit the proposed order to the court clerk for signature by the judicial officer with a declaration explaining the circumstances and with copies of both communications attached.

(Adopted Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; Amended Eff. 1/1/96; Renumbered & Amended Eff. 7/1/98; Renumbered 7/1/2001)



## CHAPTER 12 MISCELLANEOUS

### Rule 5.64

#### Child Support

##### A. Amount of Support

In any proceeding in which a party seeks to establish or modify child support, whether temporary or permanent, based on State Law or Federal Act, the amount shall be determined pursuant to Family Code section 4050 *et seq.*

##### B. Presumptions Used to Calculate Support

Pursuant to Family Code section 4059, subdivision (a), the following rebuttable presumptions shall be applied to determine the appropriate income tax filing status and number of withholding exemptions for a party. These presumptions may be rebutted by any relevant factors including material generated by computer programs certified by the Judicial Council:

Single Status will be presumed if the party has less than 50 percent time share with the child(ren) of the relationship before the court and does not have any additional dependents. In such an event, the court shall presume there is one exemption for tax withholding purposes.

Head of Household Status will be presumed if the party has not remarried and has greater than 50 percent time share with a child of the relationship before the court or has one other dependent that qualifies the party for Head of Household status. The number of exemptions for tax withholding purposes will be one plus other dependents the party is entitled to claim for income tax purposes.

Married Status will be presumed if the party is married to someone other than the other party. The total number of exemptions assigned for tax withholding purposes shall be that to which the party is entitled for income tax purposes.

The court will apply the "standard deductions" unless sufficient evidence is presented to allow the court to determine appropriate itemized deductions.

Time sharing percentages shall be calculated by assigning each parent the number of hours that the child is scheduled to be with that parent or to be under the care, custody or control of that parent. Unless rebutted by competent evidence, it shall be assumed that the hours credited to a parent who is not the primary caretaker shall begin at the time the child is transferred to his or her care and shall not extend beyond the end of his or her custodial or visitation time when the child is returned to the other parent or to the child's school or day care provider. "Primary caretaker" refers to the parent who has custody of the child the majority of the time.

##### C. Child Support

In any proceeding in which a party is seeking child support both parties shall comply with rule 5.47 (Income and Expense Declarations).

##### D. Stipulations

###### (i) Mandatory Language

To be accepted by the court any written stipulations for the payment of child support must

include the following language: "The parties declare all of the following:

(1) They are fully informed of their rights concerning child support.

(2) The order is being agreed to without coercion or duress.

(3) The agreement is in the best interests of the children involved.

(4) The needs of the children will be adequately met by the stipulated amount.

(5) The right to support has not been assigned to any county pursuant to section 11477 of the Welfare and Institutions Code and no public assistance application is pending."

###### (ii) Issuance of Wage Assignment

To be accepted by the court, a written stipulation for the payment of child support must include the following or similar language: "A wage assignment shall issue for the payment of support ordered pursuant to this agreement."

###### (iii) Stay of Service of Wage Assignment

Stipulations must provide for the issuance of a wage assignment. However, the stipulation may provide for the stay of service of the wage assignment by including the following or similar language:

"A wage assignment shall issue for the payment of support ordered pursuant to this agreement. With reference to Family Code section 5260 *et seq.*, the parties agree that they are specifically providing for an alternative arrangement for the payment of the support obligations as set forth in this agreement that is acceptable to both parties. The parties further agree to stay the service of the wage assignment, until the stay is terminated pursuant to Family Code section 5261."

(Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Amended Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; 7/1/98; Renumbered 7/1/2001)

### Rule 5.65

#### Spousal Support Guideline Information

San Diego County has declined to adopt any specific spousal support guideline. The court will consider all relevant factors in setting temporary spousal support, including guideline calculations based upon any formulae adopted in other counties of this state.

(Adopted Eff. 4/1/95; Renumbered and Amended Eff. 7/1/98; Renumbered 7/1/2001)

### Rule 5.66

#### Attorneys Seeking to be Relieved as Attorney of Record

Absent a properly executed substitution of attorney form or a client's consent in open court, attorneys will not be relieved unless a properly served notice of motion or OSC is before the court pursuant to rule 376 of the California Rules of Court.

The entry of a status-only judgment shall not be a basis for withdrawal pursuant to Code of Civil Procedure section 285.1.

(Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Renumbered & Amended Eff. 10/1/92; Renumbered & Amended Eff. 4/1/95; Amended Eff. 7/1/95;

Amend Eff. 7/1/96; Renumbered & Amended Eff. 7/1/98; Renumbered & Rev. 7/1/2001)

**Rule 5.67****Bifurcation of Marital Status**

A request to bifurcate the trial of the marital status from the remaining issues in the case will ordinarily be granted, and the requesting party will be permitted to present jurisdictional testimony to obtain a judgment of dissolution (status only). The motion to bifurcate shall be filed on the appropriate Judicial Council form which requires at least 30 days' notice. (Judicial Council form 1286.75). If appropriate, the court order for bifurcation shall include the language set forth in Appendix H. An interim domestic relations order shall be issued if there is a community property interest in an ERISA pension plan. If appropriate, the interim order will include the language set forth in Appendix I.

(Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Amended Eff. 7/1/92; Amended Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; Renumbered & Amended Eff. 7/1/98; Renumbered 7/1/2001)

**Rule 5.68****Writs of Execution**

Writs of execution on judgments or orders in a fixed amount, or based on judgments or orders providing for installment payments, do not require a judicial officer's signature or notice to the opposing party before presentation to the records division of the clerk's office for approval and issuance.

A supporting declaration must be submitted to the clerk. The declaration must allege, under penalty of perjury, the date and amount of the judgment or order, the date and amount of any payments thereon and the current, unpaid balance. For writs based on installment judgments or orders, the declaration shall clearly set forth in columns the date and amount of each payment as it came due, the date and amount of any payments received, and a running total of the amount owing. The supporting declaration for either type of judgment or order shall also state that no other writ on this judgment or order is outstanding in the same county and that the arrearages have accrued within the past 10 years, unless the arrearages relate to child support, spousal support, or family support in which case Family Code section 4502 will govern. The writ may include the fee paid for issuance of the writ. If attorneys' fees are requested, a hearing is required, and an income and expense declaration must be filed. If the moving party is requesting interest on the arrearages, or costs not awarded in the original order, a declaration setting forth the calculation of the amount of interest on the arrearages, or a cost bill, shall be filed.

(Adopted Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; Renumbered & Amended Eff. 7/1/98; Renumbered 7/1/2001)

**Rule 5.69****Elisors**

Where one of the parties will not or cannot execute a document necessary to carry out a court

order, the Clerk of the Superior Court, or his or her authorized representative or designee may be appointed as an elisor to sign the document. An application for appointment of an elisor may be made ex parte. When applying for an appointment of an elisor, the application and proposed order shall designate "The Clerk of the Court or His/Her Designee" as the elisor. The application shall not set forth a specific court employee. The declaration supporting the application shall include specific facts establishing the necessity for the appointment of an elisor.

If the court grants the application for appointment of an elisor, to ensure the availability of an authorized elisor, the applicant shall contact the business office to make an appointment for the actual signing of the document(s). If the elisor is signing documents requiring notarization, the applicant must arrange for a notary to be present when the elisor signs the document(s).

(Adopted Eff. 1/1/89; Renumbered Eff. 1/1/90; Amended Eff. 1/1/91; Renumbered & Amended Eff. 1/1/92; Renumbered & Amended Eff. 4/1/95; Renumbered & Amended 7/1/98; Renumbered & Rev. 7/1/2001)

**Rule 5.70****Appointment of Counsel for Children**

A child's attorney is charged with the representation of the child's best interests. In addition to the professional requirements of advocacy and the provisions of Family Code sections 3150 and 3151.5, the child's counsel shall gather and present to the court all facts that bear on the best interests of the child, including any preferences of the child.

The following rules shall govern the appointment of counsel for children pursuant to Family Code sections 3150 - 3153.

**A. Appointment of Counsel.**

In any family law or other proceeding where two or more persons are disputing the division of time with (physical custody) or responsibility for (legal custody) of a minor child or the court determines that the appointment is justified by the facts of the specific case, the court should consider the appointment of an attorney to represent the best interests of the child if requested to do so by either party, the attorney for either party, a mediator performing the duties under Family Code section 3170 et seq., a professional person making a custody recommendation under Family Code sections 3110 et seq., a court appointed guardian ad litem or special advocate, the child, or any relative of the child or the court on its own motion even over the objection of the parties.

**B. When Counsel for Child May Be Appointed.**

1. The dispute is highly adversarial, exceptionally intense, protracted or the parties are so embroiled in the dispute that the needs of the child are being neglected.

2. The child is subjected to stress on account of the dispute which might be alleviated by the intervention of counsel representing the child.

3. The parties are without counsel and the court of Family Court Services has reason to believe that the child may be at risk or that the information provided by the parents is either insufficient or unreliable.

4. There is an allegation of child abuse and there is a pending custody dispute between the parents. The appointment will ordinarily be made as soon as these issues are brought to the attention of the court or Family Court Services.

5. There are allegations that a parent, step parent, or other person with the parent's knowledge, has physically, mentally or sexually abused the child.

6. It appears that neither parent is capable of providing a stable and secure environment for the child.

7. The child is capable of verbally expressing his or her views/preference and no psychological evaluation has been ordered.

8. The parties agree that counsel should be appointed for a child and the court determines there is good cause to do so. In addition to informing the court of a joint request for appointment of counsel during a noticed hearing, a written stipulation and declaration in support of a joint request may be presented to the court during ex parte hours or in a manner designated by the court for such matters.

9. A matter is before the Family Law Court withing one year of issuance of an exit order from Juvenile Court. Unless a public defender has been representing the child in Juvenile Court, the child's Juvenile Court attorney, if available., will continue on the case and shall be appointed by the Family Law Court so that the attorney's case history, knowledge and experience will not be lost.

10. A matter is calendared in Family Law Court more than one year after Juvenile Court involvement has terminated. If the child was represented by private counsel and not by a public defender while in Juvenile Court, the court will consider whether the child's Juvenile Court attorney should be appointed by the Family Law Court so that the attorney's case history, knowledge and experience will not be lost.

11. The parties disagree regarding medical treatment for the child and the child's health is at risk.

12. There is an issue whether to waive a privilege on behalf of the child.

13. The best interests of the child appear to require special representation.

#### **C. Procedure for Appointment of Counsel.**

1. The court shall determine which of the following methods will be used for the selection of counsel:

a. By the judge's selection of a panel member;

b. By the parties' stipulation to a panel member; or

c. By the parties' selection from one of the next three names on the list of panel members. Upon selection of counsel for a child, the court clerk shall contact the attorney to determine his or her availability to accept the appointment. If the attorney

is not available, another panel member shall be selected.

2. Once counsel has been selected and has accepted the appointment the court shall:

a. Advise the parties that a determination will be made as to the method of payment pursuant to Family Code section 3153 at a subsequent hearing; and

b. Order both parties and claimants, if any, to file and serve current Income and Expense Declarations prior to the next hearing.

3. At the court's discretion, the court may conduct a hearing within two weeks to make the determination for payment and to specify the issues to be addressed by the child's counsel. The court clerk shall notify the prospective appointee of the date and time for hearing.

4. **Meet and confer requirements:** At the hearing at which counsel for the child is appointed, the court shall order the parties to meet and confer as follows:

a. **Both parties represented:** Counsel for parties shall meet and confer on issues to be addressed by counsel for the child. Counsel shall prepare a joint statement of the issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. The child's counsel shall be provided with a copy of the joint statement.

b. **Once party represented:** Counsel for the represented party shall meet and confer with the unrepresented party and shall prepare a statement of the issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. Counsel for the represented party shall provide a copy of the statement to the child's counsel.

c. **Unrepresented parties:** Except in cases with allegations of domestic violence or cases in which the court believes that a meet and confer would be ineffective, the parties shall meet and confer after the court hearing appointing counsel for the child and prepare a statement of issues and contentions, including each party's position and a list of all professionals who are or have previously been involved in the case, their role and dates of involvement. This statement shall be provided to the court clerk, who shall provide it to the child's counsel with the Order Appointing Counsel for Child.

D. **Contents of Order Appointing Counsel for Child; Conduct of Hearing; Distribution of Order Appointing Counsel for Child.**

1. The court shall issue an Order Appointing Counsel for Child on Form SDSC D-41, which shall specify the following:

a. The scope of counsel's duties with specificity and the issues which gave rise to the appointment of the child's counsel; and

b. Any tasks expected to be performed by the child's counsel to benefit the child.

2. Pursuant to Family Code section 3151(b), the court order shall specify whether the

child's counsel shall prepare a written report to be filed the court and served upon the parties in advance of any hearing.

3. Pursuant to Family Code section 3153 the court shall determine:

a. Whether both parties together are financially unable to pay all or a portion of the cost of counsel appointed; and

b. Whether the entire amount or a portion of the cost of the child's counsel shall be paid by the Superior Court.

4. The court should determine the method of payment for counsel fees and costs associated with the child's representation. If the court determines that payment for services of the child's counsel is to be paid by the Superior Court, the court shall direct the court clerk to provide a copy of the Order Appointing Counsel for Child to the San Diego Superior Court.

5. The court shall order the parties to provide information and sign releases for all professionals who are or have been involved with the parties and/or the child.

6. In the event the child's counsel is not present at the hearing appointing him or her and there will not be a hearing within two weeks regarding issues and fees, the court shall order that the child's counsel be provided with a transcript of the hearing and reserve jurisdiction over repayment to the court for the cost of the transcript.

7. The court shall order that the parties or their attorneys provide the child's counsel with copies of all pleadings, orders, reports, other court documents and correspondence that are relevant to the custody, visitation or other child related issues, unless the child's counsel has requested otherwise. If the child's counsel is being paid by the Superior Court and if the parties do not have copies of the documents, the child's counsel may request copies of relevant documents be made by the court staff.

8. If there is hearing on issues and fees, the court shall direct counsel for one of the parties to prepare the order or, in the even neither of the parties is represented, the court shall direct the child's counsel to do so. The order, if prepared by the child's counsel, may be submitted directly to the court for approval.

9. The court shall reserve jurisdiction to:

a. Consider payment by the Superior Court;

b. Require the parties to reimburse the Superior Court;

c. Order the parties to pay the child's counsel at his/her normal hourly rate or any other rate deemed reasonable by the court.

10. The Order Appointing Counsel for Child shall be distributed as follows:

a. Child's counsel;

b. Each party;

c. Family Court Services;

d. Court file; and

e. Superior Court (for payment).

**E. Appointment for Two or More Children.** If there are two or more children, the court shall consider whether there may be such a conflict

between the children that one attorney cannot adequately represent them all.

#### **F. Rights and Obligations Upon Appointment of Counsel.**

1. Once counsel for a child has been appointed, he or she shall be given notice of all future proceedings and the child shall be treated as a party in the action, except as to discovery. The child's counsel shall participate in any proceeding in which custody, visitation or related matters are at issue. The child's counsel may participate in other proceedings in the case if he or she believes the child's best interests would be served by such participation.

2. The child's counsel must interview or observe the child if the child is living in the County of San Diego.

3. The child's counsel shall not be charged for the following:

a. Filing fees including a first appearance fee when filing any motion on behalf of the child;

b. For any photocopies requested from the court's files concerning the child; or

c. Any court reporter's fees subject to the court ordering payment of the fees by one or both of the parties. Prior court authorization is required when the child's counsel orders a transcript. The child's counsel shall submit a request for the court to pay for a transcript including a brief description of the reason the transcript is necessary.

4. The child's counsel may communicate, either telephonically or by letter, with Family Court Services and/or with any evaluator, including psychological evaluators. However, with respect to other written documents (i.e., from third parties, agencies or institutions) that are provided by the child's counsel to Family Court Services or an evaluator, the child's counsel is subject to the same local rules regarding psychological evaluations and Family Court Services communications as are other counsel, as set forth in Rules 5.60 and 5.61.

5. The representation of children shall be in compliance with Family Code sections 3151 and 3151.5.

6. If counsel for a child files a motion on behalf of the child, he/she may sign the Application for Order and Supporting Declaration which shall contain the details of the requested relief and the supporting information for the request. If a motion is filed by a party and counsel for the child wishes to file a response on behalf of the child, he/she may sign the Responsive Declaration to Order to show Cause or Notice of Motion which shall contain the details of the requested relief and the supporting information for the request.

7. Once child's counsel has been appointed, the court will not accept any stipulated order concerning custody or visitation or the child's counsel fees unless child's counsel has signed the stipulation.

8. The child's counsel may retain experts or investigators only with prior court approval and notice to the parties.

**G. Prerequisites for Placement on Court-Appointment Panel.** An attorney shall be appointed only if he or she is a member of the court appointment panel. The list of panel members shall be maintained by a person designated by the supervising Family Law judge at each courthouse.

In order for an attorney to be on the court appointment panel, the attorney must:

1. Fill out the application form available from the Family Law judicial secretary;

2. Have attended the most recent training session sponsored by the San Diego County Bar Association or attended a supervised tape showing of that session;

3. Have completed five years of practice with at least a 50% concentration in family law, juvenile court dependency and/or guardianship proceedings or had other comparable training, including extensive experience with child custody proceedings. The supervising family law judge or his or her designee will determine if an attorney has had comparable other training and has had sufficient experience with child custody proceedings. An attorney who has been excluded from representing children in Juvenile Court will be excluded from the panel;

4. Have represented a party in at least five contested custody/visitation proceedings in Family Court in the past three years;

5. Agree that the application form can be made available for review by the counsel representing the parents or the unrepresented litigants; and

6. Maintain the minimum amount of malpractice insurance required by the State Bar. For cases where the child's counsel is paid by the Superior Court, the minimum amount of malpractice insurance is higher than what is required by the State Bar. Currently the minimum required in such cases is \$250,000/\$500,000.

7. The application for participation in the panel shall be submitted to the Counsel for Children Subcommittee which shall present the application for consideration at its next meeting and determine whether the applicant shall be recommended to the supervising family law judge or his or her designee shall determine whether the application shall be accepted.

**H. Education Requirements.** The Counsel for Children Subcommittee shall establish education requirements for participation in the court-appointment panel, and for remaining on the panel. Those requirements shall include, but not be limited to, domestic violence training.

**I. Termination of Appointment.** The court, in its discretion, shall consider the termination of the appointment of the child's counsel under the following circumstances:

1. At the time a final order or judgment has been filed, or 90 days thereafter;

2. No motions related to custody or visitation issues have been filed within the preceeding six months upon the filing of a Notice of Withdrawal, Form 1290.5;

3. A motion filed by any party for good cause; or

4. A motion to be relieved filed by the child's counsel if the child's counsel does not believe that he or she can effectively represent the child.

The child's counsel's appointment shall not be terminated if the court, upon a showing of good cause, deems it necessary to extend the appointment, or if the court requests periodic review or monitoring of the child related issues before the court.

**J. Grievance Against Child's Counsel.** Any party may file a grievance against the child's counsel on the form prescribed by the Counsel for Child Children Subcommittee. The scope of the grievance is limited to whether the attorney against whom the grievance is filed shall remain on the court appointment list and be eligible to receive future appointments. Any issues regarding fees charged by the child's counsel or the removal of the child's counsel from the case must be addressed to the judge to whom the court case is assigned.

(Adopted Eff. 4-1-95; Amended Eff. 1-1-96; Renumbered & Amended Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003)

## Rule 5.71

### Appraisal of Closely Held Business Interests

#### A. Standard of Value for Business Appraisal

Businesses are appraised in family law proceedings to establish the value of the interest to the spouse who is awarded the business. Unless otherwise ordered by the court, the standard of value shall be the "marital value" which means the investment value of the business interest to a hypothetical, objective investor, considering the following factors:

1. Since there will be no change of ownership, there shall be no reduction in value to reflect the risk inherent in a transfer of the business interest.

2. Pursuant to Family Code section 771, in establishing sustainable earnings, separate property earnings attributable to the operating spouse's efforts after the date of separation shall not be considered.

3. There will be no reduction in value for capital gain or other taxes associated with a sale.

4. A business may have "Marital Value" even though it is not saleable.

5. The business interest being valued may include assets and liabilities which would not be included in a sale, such as cash, accounts receivable, accounts payable, and non-operating assets and/or liabilities.

#### B. Procedure to be Followed in Appraisal Process

(See time line set forth in Appendix J)

##### 1. Joint Appraiser

a. Before filing an at issue memorandum, the parties shall jointly retain a business appraiser.

b. Before contacting a business appraiser for use at a settlement conference or trial, counsel shall meet and confer to select a joint appraiser.

c. If counsel cannot agree on a joint appraiser, a joint appraiser shall be appointed by the court on ex parte motion.

d. The appraiser shall be informed that he or she is retained as a neutral expert working for both parties. Within 14 days of being retained, the appraiser shall mail a written request to each counsel for documents and information.

e. Within 30 days of the date the appraiser's request is mailed, each party shall provide the requested documents and information, including access to the site and to knowledgeable agents and employees.

f. Counsel shall send opposing counsel copies of all correspondence and written documents submitted to the joint appraiser.

g. Neither the parties nor counsel may initial verbal communications with the joint appraiser unless the opposing counsel or party participates in the communication. The appraiser may initiate verbal communication with only one attorney.

h. If appraiser initiated communication raises a material issue, the appraiser shall communicate such development to the party or attorney who was not consulted.

i. Within 60 days of providing all documents and information to the appraiser, the appraiser shall communicate with and submit a draft appraisal report to each party.

j. The parties shall meet and confer with the appraiser within 30 days of issuance of the draft appraisal to comment on and make objections to the draft appraisal before it is finalized.

k. The joint appraiser shall normally be retained with community funds.

l. The joint appraisal shall be without prejudice to the right of either party to retain a review appraiser at that party's expense. Such expense shall be subject to reallocation only upon a showing of good cause. The review appraiser shall only consider documents and information provided to or considered by the joint appraiser.

m. If a review appraisal is obtained, the joint and review appraisers shall confer and present a joint statement listing the issues on which they agree and disagree, and setting forth the basis for their respective positions. Upon submission of the joint statement the review appraiser shall be deemed a designated expert witness.

n. The appraisal report shall be received into evidence without further foundation. However, this shall not preclude either side from calling the joint appraiser for cross-examination. A \$750 witness fee shall be tendered to the joint appraiser before trial by the party disputing the joint appraiser's findings.

o. These time guidelines may be modified by written agreement of counsel and the appraiser.

## **2. Date of Valuation**

Property will be valued as near as practical to the trial on property division issues, unless the property is a small business which is largely dependent on the operating spouse's skill, industry,

reputation and guidance. In this case, the business shall be valued at the time of separation.

If counsel are unable to agree on the valuation date, the joint appraiser shall value the interest at both date of separation and as near as practical to the time of trial.

## **C. Appraisal Reporting Requirements**

The appraisal shall be in writing and issued in draft form before the completion of the appraisal process. A final written appraisal shall be issued within 30 days of completion of the meet and confer required by section B1.i. above or within 30 days of the meeting of appraisers required by section B1.1., whichever is later.

The appraisal shall state the specific reasons that would justify the use of the appraisal method(s) chosen. The appraisal shall state the risk and other factors specific to this business that were considered in selecting the capitalization rate and the nature of the impact each factor had on this rate. If the excess earnings method is chosen, the capitalization rates will normally be within the range of 20% (multiple of 5) to 100% (multiple of 1). If other methods are chosen, such as capitalization of net earnings or capitalization of net cash flows, other ranges of capitalization rates may apply. The appraiser shall state the factors considered in arriving at any reasonable compensation estimate used in the appraisal, including compensation studies or other reference materials. The appraisal shall state the factors considered in making any other adjustments, assumptions or estimates made in the appraisal process.

(Adopted Eff. 4-1-95; Renumbered & Amended Eff. 7/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

## **Rule 5.72**

### **Discretionary Dismissal**

Pursuant to Code of Civil Procedure section 583.410 and the California Rules of Court, rule 372, cases which are not conditionally settled or brought to trial within two years after the action was commenced may be set for a hearing to dismiss the case. The filing of a judgment or a dismissal will vacate the hearing. If the petitioner/plaintiff does not appear at the hearing the case will be dismissed without prejudice, subject to the court's reservation of jurisdiction to set aside the dismissal nunc pro tunc. Cases involving the Department of Child Support Services shall be reinstated administratively once service has been obtained.

(Adopted Eff. 4-1-95; Renumbered & Amended Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003, Rev. 1/1/2004)

## **Rule 5.73**

### **Family Law Facilitator's Duties**

In addition to the services provided by the family law facilitator pursuant to Family Code section 10004, pursuant to Family Code section 10005 the family law facilitator may:

1. Meet with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Family Code section 10012;

2. Draft stipulations on any issues agreed to by the parties;

3. Prior to or at the hearing, and at the request of the court, review the paperwork, examine documents, prepare support schedules, and advise the judge whether the matter is ready to proceed;

4. Assist the clerk in maintaining records;

5. Prepare formal orders after hearing where both parties are unrepresented;

6. Serve as a special master and make findings to the court, unless the facilitator has served as a mediator in the case;

7. Assist the court with research and any other responsibilities which will enable the court to respond to litigants' needs; and

8. Develop bar and community outreach programs that will assist unrepresented and financially disadvantaged litigants to gain meaningful access to family court.

(Eff. 7/1/98; Rev. 1/1/2000; Renumbered 7/1/2001)

### **Rule 5.74**

#### **Supervised Visitation Requirements**

Providers of supervised visitation, whether the provider is a friend, relative, paid independent contractor, employee, intern or volunteer operating independently or through a supervised visitation center or agency are required to follow the legal requirements and obligations set forth in California Rules of Court, rule 5.240.

Informational materials about the role of a provider, the terms and conditions of supervised visitation under California Rules of Court, rule 5.240, subdivision (k) and the legal responsibilities and obligations of a provider as under (m) and (n) are available at all locations of Family Court Services listed in Appendix G.

(Effective 1/1/2004)

### **Rule 5.75**

#### **Communication Between Court Divisions**

The court shall develop procedures to facilitate communication between divisions regarding information involving child custody and visitation orders and criminal court protective orders pursuant to California Rules of Court, rule 5.500.

(Effective 1/1/2004)





## San Diego County Superior Court Rules

---

### APPENDIX A

#### TELEPHONE NUMBERS OF COURT AND CALENDAR CLERKS

##### CENTRAL DIVISION:

Department F1	Court Clerk IC Clerk	(619) 557-2001 (619) 557-2163
Department F2	Court Clerk IC Clerk	(619) 557-2003 (619) 557-2196
Department F3	Court Clerk IC Clerk	(619) 557-2005 (619) 557-2188
Department F4	Court Clerk IC Clerk	(619) 557-2007 (619) 557-2064
Department F5	Court Clerk IC Clerk	(619) 557-2009 (619) 557-2157
Department F6	Court Clerk IC Clerk	(619) 557-2011 (619) 557-2164

##### MADGE BRADLEY:

Department F9	Court Clerk	(619) 687-2004
---------------	-------------	----------------

##### EAST COUNTY:

Business office		(619) 441-6770
Department 5	IC Clerk	(619) 441-4495
Department 6	IC Clerk	(619) 441-6633
Department 7	IC Clerk	(619) 441-3494

## San Diego County Superior Court Rules

---

### **SOUTH COUNTY**

IC Clerk	(619) 691-4877
----------	----------------

### **NORTH COUNTY**

#### Department 12

Court Clerk	(760) 940-4800
IC Clerk	(760) 806-6139

#### Department 12A

Court Clerk	(760) 940-4596
IC Clerk	(760) 806-6137

#### Department 14

Court Clerk	(760) 940-4593
IC Clerk	(760) 806-6136

#### Department 15

Court Clerk	(760) 940-4591
IC Clerk	(760) 806-6138

#### Department 19

Court Clerk	(760) 940-4369
IC Clerk	(760) 806-6138

(Rev. 1/1/2004)

APPENDIX B

ALTERNATIVE DISPUTE RESOLUTION  
INFORMATIONAL NOTICE

Mediation is a form of Alternative Dispute Resolution available to you at any stage of the proceedings in your action for dissolution, legal separation or annulment of your marriage.

Mediation is a voluntary settlement process in which the parties meet with an impartial mediator. The mediator assists the parties to clarify issues, facilitate communication and consider options for settlement, and to reach a mutually acceptable agreement. This process is different from the court controlled process because, in the mediation, the parties make the decisions instead of a judge. In mediation, the parties control the division of their assets, the provisions for child and spousal support and the sharing of their children.

Discussions take place in the privacy of the mediator's office and no court appearances are necessary. When mediation is completed, a formal agreement is prepared and filed and a Judgment is entered by the court.

**The mediation process is not suited for every case or individual. You are advised to seek the advice of counsel regarding mediation and all forms of resolving your issues. It is suggested that you utilize the services of a mediator who is a family law attorney. If you have a need for emergency restraining orders, mediation is not appropriate at this time.**

A list of attorneys who are available to do family law mediation is maintained at the office of the San Diego County Bar Association at 1333 Seventh Avenue, San Diego, California (619-231-0781) and at the North County Bar Association, 640 Escondido Avenue, Vista, California 92084 (760-758-4755). You may also consult your telephone directory. The charge for mediation must be determined directly between you and the mediator you choose.

You are encouraged to serve a copy of this fact sheet when you serve the Petition for Dissolution/Legal Separation/Annulment in this matter.

**APPENDIX C**

**FAMILY LAW BRANCH COURT FILING BOUNDARIES**

“Deleted and is superceded by Appendix I-A in Division I.”

# San Diego County Superior Court Rules

---

## APPENDIX D

### MANDATORY SHORT CAUSE TRIAL STATEMENT

Attorney for \_\_\_\_\_

#### SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

HUSBAND'S/WIFE'S  
MANDATORY SHORT CAUSE  
TRIAL STATEMENT

DATE:

TIME:

DEPT.:

#### I. MEET AND CONFER STATEMENT:

A. Date of Conference:

B. In Person/By Phone:

C. Issues Settled Are: (Be Specific)

- 1.
- 2.
- 3.

D. Issues To Be Litigated Are: (Be Specific)

- 1.
- 2.
- 3.

E. If Counsel Failed To Meet And Confer, Explain Reasons in Detail.

#### II. STATISTICAL DATA:

A. Date of Marriage:

B. Date of Separation:

C. Length of Marriage:

D. Marital Status Terminated? \_\_\_\_ If so, date:

E. Husband's Age ( ) and Employment:

## San Diego County Superior Court Rules

---

F. Husband's Gross Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_

G. Husband's Paydays:

H. Cohabitee or New Spouse's Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_

I. Wife's Age ( ) and Employment:

J. Wife's Gross Monthly Income: \_\_\_\_\_ Net: \_\_\_\_\_

K. Wife's Paydays:

M. Minor Children:

<u>Name</u>	<u>Date of Birth</u>	<u>Age</u>	<u>Sex</u>	<u>Residing With</u>
-------------	----------------------	------------	------------	----------------------

### III. HISTORY OF PROCEEDINGS:

(Briefly Summarize All Prior Court Proceedings)

### IV. HUSBAND'S/WIFE'S PROPOSALS RE ISSUES:

(In Same Order As Issues Are Listed in Part I D Above)

1. Issue: (e.g., Spousal Support)
2. Issue: (e.g., Child Support)
3. Issue: (e.g., Attorney's Fees)

### V. ATTACHMENTS AND EXHIBITS:

A. Where issues include the division of assets and debts counsel shall attach relevant schedules of the proposed division (See Attachment 1).

B. Other appropriate attachments may be included, and attachments required by rule 5.51 (H),(I), and (J) shall be included.

(Revised eff. 1/1/2004)

# San Diego County Superior Court Rules

## APPENDIX D - ATTACHMENT 1

\_\_\_\_\_'s Proposed Division of Community Property

Asset	Gross FMV	Debt	Net FMV	Awarded To Husband	Wife
<b>I. STIPULATED</b>					
Residence	100,000	70,353	29,647		29,647
Furniture	3,450	-0-	3,450	800	2,650
1986 Chevy Sprint	1,643	-0-	1,643	1,643	
1989 Honda Civic	6,200	3,114	3,086	3,086	
1988 Nomad RV	17,000	10,324	6,676	6,676	
Husband's IRA	2,000	-0-	2,000	2,000	
Wife's IRA	2,000	-0-	2,000	2,000	
B of A Visa		734	(734)	(734)	
<b>II. DISPUTED</b>					
Rental Property	82,500	54,980	27,520	27,520	
Pool Table	650	-0-	650	650	
Husband's Pension	29,450	-0-	29,450	14,725	14,725
Husband's Epsteins		1,288	(1,288)	(1,288)	
Bank of America Savings	25,212	-0-	25,212	7,578	17,634
<b>TOTAL</b>	<b>270,105</b>	<b>140,792</b>	<b>129,312</b>	<b>64,656</b>	<b>64,656</b>

# San Diego County Superior Court Rules

---

## APPENDIX E

### LONG CAUSE TRIAL RULES

THESE RULES APPLY ONLY IN THE DOWNTOWN FAMILY LAW BRANCH. For any trial set on the long cause trial calendar (these rules do not apply to long cause OSCs) counsel must:

#### A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

Personally meet and confer to exchange all of the following documents:

1. Trial briefs, which shall include a list of issues.
2. Where support or fees are at issue, Income and Expense Declarations including all required attachments.
3. A list of proposed exhibits (see attachment 1) and copies of actual exhibits. (In custody trials, counsel need not exchange the expert's test data, notes, etc., related to an evaluation previously performed if the data and report were previously provided to each counsel).\*
4. A list designating non-party witnesses (including name, address and telephone number) and the subject matter of each witness's testimony (see attachment 2).\*

#### B. FOUR COURT DAYS BEFORE TRIAL

1. Telephonically meet and confer to discuss stipulations on admissibility of exhibits, specifying objections to each exhibit to which admissibility is not stipulated, and discuss all aspects of any intended in limine motions.
2. If objections to exhibits are unresolved, or motion in limine is to be filed, schedule appointment with court for pretrial conference to be held at least two court days before trial.
3. File with the clerk of the trial department and personally serve on opposing counsel any in limine motions (see attachment 3).
4. Arrange with the clerk of the trial department a date and time to pre-mark exhibits and to file original exhibits.
5. File trial brief, Income and Expense Declaration and court's copy of the exhibits with the clerk of the trial department.

#### C. THREE COURT DAYS BEFORE TRIAL

1. File with the clerk of the trial department and personally serve on opposing counsel a written list of objections to the exhibits of the other party (see attachment 4).

#### D. TWO COURT DAYS BEFORE TRIAL

1. If there are unresolved objections to exhibits or if motions in limine were filed, both counsel shall confer personally with the court to discuss the objections and motions. At that time, the court may issue a tentative ruling on the issues presented.

#### E. DAY OF TRIAL

1. All objections to exhibits and motions in limine will be heard on the record and a ruling will be issued before the presentation of opening argument.
2. Each party shall pay the mandated statutory court reporter fee for each half day of trial. It is the duty of counsel to know the amount of that fee before the day of trial so that counsel can deliver this amount to the clerk in the trial department before the start of each half day of trial. The amount shall be paid in cash or check. Checks can only be from a party or the attorney's client trust account. Checks shall be made payable to the Clerk of the Superior Court.
3. Each day, the morning session of trial will usually begin at 9 a.m. and end at noon with a 15 minute break at approximately 10:30 a.m. The afternoon session will usually begin at 2 p.m. and end at 4:30 p.m. with a 15 minute break at approximately 3:15 p.m. At the end each day of a multi-day trial, counsel and the court shall review the next day's witnesses, examination time and any other calendaring issues.

**Any witnesses not disclosed pursuant to these rules shall not be permitted to testify at trial. Any exhibits not exchanged pursuant to these rules shall not be introduced at trial. The only exceptions are true impeachment or rebuttal witnesses or exhibits.**

**\*The only exceptions are true impeachment or rebuttal witnesses or exhibits.**



**San Diego County Superior Court Rules**

---

**APPENDIX E - ATTACHMENT 1  
LIST OF PROPOSED EXHIBITS**

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

LIST OF PROPOSED EXHIBITS

Petitioner/Respondent submits the following proposed exhibits:

- 1.
- 2.
- 3.
4. etc.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorney for:

# San Diego County Superior Court Rules

---

## APPENDIX E - ATTACHMENT 2

### LIST OF WITNESSES

Attorney for \_\_\_\_\_

### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of	CASE NO. D
Petitioner:	LIST OF WITNESSES
and	
Respondent:	

Petitioner/Respondent intends to call the following witnesses at the time of trial to testify on the subjects stated:

NAME	ADDRESS AND TELEPHONE NUMBER	SUBJECTS
1.		
2.		
3.		
4. etc.		

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorney for:

## San Diego County Superior Court Rules

---

### APPENDIX E - ATTACHMENT 3 NOTICE OF MOTIONS *IN LIMINE*

Attorney for \_\_\_\_\_

#### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

NOTICE OF MOTIONS *IN LIMINE*

Petitioner/Respondent requests the court enter the following in limine orders for the reasons stated:

- 1.
- 2.
- 3.
4. etc.

This motion is based upon the records, files and pleadings in this action, the memorandum of points and authorities submitted with this notice of motion, and any and all other matters which may be timely presented before the time of the hearing on this motion.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorney for:

**San Diego County Superior Court Rules**

---

**APPENDIX E - ATTACHMENT 4**  
**OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT**

Attorney for \_\_\_\_\_

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

In re the Marriage of Petitioner: and Respondent:	CASE NO. D OBJECTIONS TO EXHIBITS OF PETITIONER/RESPONDENT
--	--

Petitioner/Respondent objects to the following exhibits for the reasons stated:

EXHIBIT	OBJECTION
1.	
2.	
3.	
4. etc.	

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorney for:

## San Diego County Superior Court Rules

---

### APPENDIX E - ATTACHMENT 5

#### LONG CAUSE TRIAL RULES CHECKLIST

##### A. SEVEN COURT DAYS OR MORE BEFORE TRIAL

- \_\_\_\_\_ 1. Personally meet and confer with opposing counsel.
- \_\_\_\_\_ 2. Exchange trial briefs.
- \_\_\_\_\_ 3. Where support or fees are at issue, exchange Income & Expense Declarations with required attachments.
- \_\_\_\_\_ 4. Exchange list of exhibits and copies of exhibits.
- \_\_\_\_\_ 5. Exchange list designating non-party witnesses (including name, address and telephone number) and the subject matter each will testify to.

##### B. FOUR COURT DAYS BEFORE TRIAL

- \_\_\_\_\_ 1. Confer with opposing counsel telephonically to discuss objections to the exhibits and in limine motions.
- \_\_\_\_\_ 2. If objections to exhibits unresolved, or motion in limine to be filed, schedule appointment for pre-trial conference.
- \_\_\_\_\_ 3. File with the court and serve in limine motions.
- \_\_\_\_\_ 4. Arrange with clerk to pre-mark exhibits and file original exhibits.
- \_\_\_\_\_ 5. File trial brief, Income & Expense Declaration and court's copy of the exhibits in trial department.

##### C. THREE COURT DAYS BEFORE TRIAL

- \_\_\_\_\_ 1. File with clerk of trial department and opposing counsel a written list of objections to the exhibits.

##### D. TWO COURT DAYS BEFORE TRIAL

- \_\_\_\_\_ 1. If there are unresolved objections to exhibits or if motions in limine were filed, confer personally with the court.

##### E. DAY OF TRIAL

- \_\_\_\_\_ 1. All objections to exhibits and motions in limine will be heard and a ruling will be issued.
- \_\_\_\_\_ 2. Each counsel must pay the mandated statutory court reporter fee for each half day of trial.
- \_\_\_\_\_ 3. At the conclusion of each day of trial, the court and counsel shall review the next days' witnesses, examination time and other calendaring issues.

## **San Diego County Superior Court Rules**

---

### **APPENDIX F**

#### **FAMILY SUPPORT DIVISION**

##### **TRIAL READINESS PROCEDURES FOR SHORT CAUSE HEARINGS**

These rules shall apply only in the Downtown Family Law Department, Family Support Division, which is located at the Central Division, County Courthouse on 220 West Broadway, San Diego . For any trial/hearing set on the short cause calendar, as to the above-mentioned Department, all parties shall comply with the following:

The Monday before the hearing date counsel/parties are ordered to meet and confer and exchange all documentation including but not limited to the following:

1. Any and all pleadings including but not limited to Trial Briefs, which shall include a list of issues, whether contested or uncontested.
2. Where support or fees are at issue, Income and Expense Declarations including all required attachments pursuant to the local rule of court.
3. A list of proposed exhibits and copies of actual exhibits which are to be pre-marked prior to the trial date.
4. A list designating non-party witnesses (including name, and the subject matter of each witness' testimony).
5. Upon the completion of said meet and confer, the Department of Child Support Services shall provide a status report to the court as to the following issues:
  - a. Issues resolved by stipulation.
  - b. Contested issues.
  - c. Time estimate.
  - d. Pre-read requests (due by noon Wednesday before the hearing date).

ANY WITNESSES NOT DISCLOSED PURSUANT TO THESE RULES SHALL NOT BE PERMITTED TO TESTIFY AT TRIAL. ANY EXHIBITS NOT EXCHANGED PURSUANT TO THESE RULES SHALL NOT BE INTRODUCED AT TRIAL. THE ONLY EXCEPTIONS ARE TRUE IMPEACHMENT OR REBUTTAL WITNESSES OR EXHIBITS.

Should counsel/parties reach a full stipulation prior to the trial date or after the meet and confer, but prior to the trial date, the Department of Child Support Services shall inform the Court immediately.

(Revised eff. 1/1/2004)

**APPENDIX G**

**LOCATION OF FAMILY COURT SERVICES**

Central Division  
1501 Sixth Avenue, San Diego  
phone: (619) 236-2681

North County  
325 South Melrose Drive, Vista  
phone: (760) 940-4433

East County  
250 East Main Street, El Cajon  
phone: (619) 441-4387

South County  
500 Third Avenue, Chula Vista  
phone: (619) 691-4660

## San Diego County Superior Court Rules

---

### APPENDIX H

#### STIPULATION AND ORDER FOR BIFURCATION

Attorneys for \_\_\_\_\_

#### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of	CASE NO. D
Petitioner:	STIPULATION AND/OR ORDER
and	FOR BIFURCATION
Respondent:	

[Insert Appropriate Introductory Provision]

**1. STATUS JUDGMENT:** The Petitioner's motion to bifurcate the status of the marriage from the remaining issues in the dissolution of marriage proceeding is granted and Petitioner shall be entitled to proceed to obtain a Judgment of Dissolution of Marriage (Status Only).

**2. RESERVATION OF JURISDICTION:** The court severs and reserves jurisdiction over all other issues including, but not limited to, the nature and division of community property, spousal support, child support, attorneys' fees and costs.

**3. STATUS OF TEMPORARY ORDERS:** All temporary orders presently in effect shall remain in effect until the time of trial or further order of the court.

**4. TAX CONSEQUENCES INCURRED:** Petitioner, and in the event of Petitioner's death, Petitioner's estate, shall indemnify and hold Respondent harmless from any and all taxes, reassessments, interest and penalties payable by Respondent should the termination of the parties' marital status before the division of the parties' community property result in a taxable event to either of the parties by reason of the ultimate division of their community property which taxes would not have been payable if the parties were still married at the time such division was made. This provision does not require the parties to file a joint tax return.

**5. TAXES, ATTORNEY FEES AND HOLD HARMLESS ORDER:** Petitioner, and in the event of Petitioner's death, Petitioner's estate, shall reimburse Respondent for all damages and costs incurred as a result of Petitioner or Petitioner's estate's failure to abide by this Order including reasonable attorneys' fees, costs and accountants' fees either incurred in defending an action by any taxing authority or enforcing the provisions of this Order.

**6. FORM OF TAX RETURN:** Paragraph 4 above shall not operate to preclude either party from making an election to file his or her own personal tax returns in a manner other than a joint return.

(#7. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY)



## San Diego County Superior Court Rules

---

**7. PROBATE HOMESTEAD:** Until judgment has been entered on all remaining issues and become final or further order of the court, whichever occurs first, the death of either party shall not terminate the right of the other party to claim a probate homestead, pursuant to Probate Code section 6520, et seq., in the residential real property located at \_\_\_\_\_. The surviving party shall be entitled to proceed to claim a probate homestead in the real property as if no termination of marital status between Petitioner and Respondent had occurred, and as if he or she were a surviving spouse.

(#8. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY)

**8. PROBATE ALLOWANCE:** Until judgment has been entered on all remaining issues and become final or until further order of the court, whichever occurs first, the death of either party shall not terminate the right of the other party to claim a family allowance pursuant to Probate Code sections 6540, et seq. The surviving party shall be entitled to claim a family allowance as if no termination of the marital status had occurred, and as if he or she were a surviving spouse.

(#9. OPTIONAL - UNLESS REQUESTED BY EITHER PARTY)

**9. PROBATE AND HOLD HARMLESS ORDER:** In the event that either party's rights to either a Probate Homestead or a Family Allowance are terminated as a result of the termination of marital status, the deceased spouse's estate shall indemnify and hold the surviving party harmless from any and all adverse consequences that may occur.

**10. HEALTH AND MEDICAL INSURANCE:** Until a Judgment is announced by the court on all remaining issues and has become final, or until further order of the court, whichever occurs first, Petitioner, and in the event of Petitioner's death, Petitioner's estate, shall maintain all existing major health and medical insurance coverage for Respondent and the minor children as named dependents so long as Petitioner is legally able to do so. At the time the Petitioner is no longer legally eligible to maintain the Respondent as a named dependent under the existing health and medical policies, Petitioner or Petitioner's estate shall at Petitioner's sole expense, purchase and maintain health and medical insurance coverage that is comparable to the existing health and medical insurance coverage. If comparable insurance is not obtained, Petitioner, or Petitioner's estate, shall be responsible for any and all health and medical expenses incurred by Respondent which would have been covered by the insurance coverage and shall indemnify and hold Respondent harmless from any adverse consequences resulting from the lack of insurance.

(#11. DOESN'T APPLY IF EMPLOYER HAS LESS THAN 20 EMPLOYEES AND IS NOT GOVERNED BY C.O.B.R.A.)

**11. ADDITIONAL PROVISIONS RE: HEALTH INSURANCE:** Where the Consolidated Omnibus Budget Reconciliation Act (C.O.B.R.A.) applies to health insurance coverage, Petitioner shall, unless relieved of this obligation by a writing signed by Respondent or Respondent's counsel, notify Petitioner's employer and do all acts necessary to insure that C.O.B.R.A. coverage is instituted for Respondent and is continued in full force and effect. If Respondent's rights under C.O.B.R.A. are terminated due to Petitioner's failure to institute and maintain proper coverage on behalf of Respondent, Petitioner, or Petitioner's estate, shall indemnify, reimburse and hold Respondent harmless from the loss of any and all benefits which would have been provided had Petitioner instituted and maintained C.O.B.R.A. coverage. Respondent will do any act reasonably necessary to facilitate Petitioner instituting coverage.

**12. REAL ESTATE:** Until a Judgment is entered on all remaining issues and becomes final, or until further court order, whichever occurs first, the parties are restrained and enjoined from transferring any real estate held by either of them personally or through or by any corporation, partnership or other entity in which they had or have any interest, to any person, business, or entity, without first giving the other party 30 days' written notice of any such proposed transfer.

## San Diego County Superior Court Rules

---

(#13: THESE ORDERS ARE DESIGNED FOR PLANS THROUGH PRIVATE EMPLOYERS WHICH ARE GOVERNED BY E.R.I.S.A. YOU MUST MAKE MODIFICATIONS IF THE PLAN IS EITHER MILITARY OR GOVERNMENTAL.)

**13.0 RETIREMENT PLAN ORDERS:** With regard to any pension plans or other forms of deferred compensation of either party, counsel shall file with this order an Interim Qualified Domestic Relations Order re Survivor Benefits in the form of Appendix K to the San Diego Superior Court Family Law Rules and cause a copy of the proposed Interim Qualified Domestic Relations Order to be served on the Plan by certified mail.

**13.1 PLAN JOINDER:** The non-employee spouse shall immediately join the Plan as a party to these proceedings.

**13.2 FINAL ORDERS:** Counsel must submit to the plan or plans, after all property issues have been entered and become final, a final qualified domestic relations order, or if a plan is awarded entirely to the employee spouse, an order terminating the interim qualified domestic relations order re survivor benefits.

**14. APPLICABLE LAW:** All provisions contained in this Judgment of Bifurcation shall be interpreted in conformance with California Family Code section 2337.

[Insert Appropriate Signature Provisions]

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

# San Diego County Superior Court Rules

---

## APPENDIX I

### INTERIM QUALIFIED DOMESTIC RELATIONS ORDER RE: SURVIVOR BENEFITS

Attorney for \_\_\_\_\_

#### SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

In re the Marriage of

Petitioner:

and

Respondent:

CASE NO. D

INTERIM QUALIFIED DOMESTIC  
RELATIONS ORDER RE:  
SURVIVOR BENEFITS

#### **PURSUANT TO THE [STIPULATED] ORDER FOR BIFURCATION OF THE PARTIES' MARITAL STATUS, THE COURT MAKES THE FOLLOWING FINDINGS AND ORDER:**

1. The Plan name and address of the Plan Administrator are as follows:

Name of Plan:  
Plan Administrator:  
Street:  
City/State/Zip:

2. Name, address and Social Security Number of Petitioner/Participant:

Participant:  
Name of Plan:  
Street:  
City/State/Zip:  
Social Security No.:

3. Name, address and Social Security Number of Respondent/Alternate Payee:

Alternate Payee:  
Name of Plan:  
Street:  
City/State/Zip:  
Social Security No.

4. \_\_\_\_\_ ("Participant") has earned certain benefits under \_\_\_\_\_ the ("Pension Plan") which are the community property of ("Alternate Payee") and Participant. Pending a final order of the court, Participant and Alternate Payee intend by this Stipulation and Order to provide for the continuation of surviving spouse benefits to Alternate Payee.

5. This Order is intended to be a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code of 1986, as amended.

## San Diego County Superior Court Rules

---

6. If Participant dies before the effective date of Participant's retirement and if Alternate Payee survives participant, then Alternate Payee shall be treated by the Pension Plan as a "surviving spouse" of Participant for purposes of any pre-retirement benefit payable to a surviving spouse under the Pension Plan. Alternate Payee shall receive all of such pre-retirement survivor benefit.

7. This Order is effective against any successor(s) or transferee plans of Pension Plan, including any plan(s) into which the Pension Plan is merged.

8. This Order is effective following the termination of the Pension Plan and shall also apply to any benefits payable to Participant by the Pension Benefit Guaranty Corporation in the event of the termination of the Pension Plan with insufficient assets to pay all benefits.

9. Each party shall be responsible for and pay any taxes due in connection with his or her receipt of distributions from the Pension Plan.

10. Upon request, each party shall perform any act reasonably necessary to carry into effect the terms of this Order.

11. The Court retains jurisdiction to make such further orders to modify, enforce, clarify or revoke the provisions of this Order. The Pension Plan will not be responsible to inquire into any possible changes in the provisions of this Order, but will act in accordance with the most recent form of the Order which has been provided to the Pension Plan.

12. Pending further order of the Court, the Plan is restrained and enjoined from making any distribution to Participant, Alternate Payee, or any other Payee.

APPROVED AS TO FORM:

\_\_\_\_\_

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

## San Diego County Superior Court Rules

### APPENDIX J

#### TIMELINE FOR APPRAISALS OF CLOSELY HELD BUSINESS

Appraiser requests documents	Parties provide documents	Joint appraiser communicates with both parties and prepares draft report	Parties, counsel, and appraiser(s) meet & confer regarding objections to draft report	Joint appraiser prepares final report, or, if necessary, joint and review appraisers prepare joint statement of issues and supporting bases
(1)	(2)			
14 Days	30 Days	60 Days	30 Days	30 Days

- (1) Parties and counsel meet and confer to select joint appraiser
- (2) Appointment of joint appraiser
- (3) Settlement conference

All times may be modified by written agreement of the parties, counsel, and appraiser.

## San Diego County Superior Court Rules

### FAMILY LAW FORMS ALPHABETICAL LISTING

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-066	1-01	1285.80	7-89	Abstract of Support Judgment	M
D-157	1-99	1296.72	1-99	Advisement and Waiver of Rights Re: Establishment of Parental Relationship (Uniform Parentage)	A
D-011B	7-99	1285.61B	7-99	Affidavit of Facts Constituting Contempt (Domestic Violence/Custody and Visitation)	M
D-011A	7-99	1285.61A	7-99	Affidavit of Facts Constituting Contempt (Financial and Injunctive Orders)	M
D-205	7-97	1299.04	7-97	Answer to Complaint or Supplemental Complaint Re: Parental Obligations (Governmental)	M
D-203	1-98	1298.02	7-94	Answer to Gov. Complaint or Supplemental Complaint to Establish Parental Relationship or Child Support or Both	M
D-009	6-00	1282.50	1-99	Appearance, Stipulation and Waivers	A
D-027	1-01	DV-100	1-01	Application and Declaration for Order (DV)	M
D-067	1-01	FJ-200	1-01	Application and Order for Appointment of Guardian Ad Litem of Minor (Family Law/Juvenile)	
D-074	7-99	1285.75	7-99	Application and Order for Health Insurance Coverage	M
D-033	6-00	1296.15	1-85	Application and Order for Reissuance of OSC	M
D-177	1-01	EA-125	1-01	Application and Order for Reissuance of OSC (EA)	
D-095	1-95	1285.29	1-95	Application for Disbursement from Child Support Security Deposit and Order for Disbursement	M
D-058	1-94	1297	1-94	Application for Expedited Child Support Order	M
D-085	1-94	1297.90	1-90	Application for Notice of Support Arrearage	M
D-007	1-99	1285.20	1-99	Application for Order and Supporting Declaration	M
D-042	1-01	1286.75	1-01	Application for Separate Trial (Motion to Bifurcate)	M
D-098	1-01	1296.91	1-01	Application to Determine Arrearages (DV)	M
D-143	7-97	1285.625	7-97	Attachment to Declaration of Support Arrearage	A
D-162	1-00	1285.73	1-00	Attachment to Qualified Domestic Relations Orders for Support	
D-089	7-99	1296.31A	7-99	Child Custody and Visitation Order Attachment	M
D-027A	1-99	DV-100A	1-99	Child Custody, Visitation and Support Attachment to Application and Declaration for Order - DV	M
D-129	1-00	1285.92	1-00	Child Support Case Registry	M
D-090	1-01	1296.31B	1-01	Child Support Information and Order Attachment	M

## San Diego County Superior Court Rules

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-15A	1-80	1285.56	1-80	Continuation of Property Declaration	M
D-137	1-98			Declaration and Order for Payment of Attorney Fees/Costs	
D-112	10-99			Declaration and Order for Service by Mailing and Posting in Lieu of Publication	
D-037	7-00	1286.50	7-99	Declaration for Default or Uncontested Dissolution or Legal Separation	M
D-156	1-99	1296.70	1-99	Declaration for Default or Uncontested Judgment	M
D-065	1-99			Declaration for Issuance of a Writ of Execution	
D-099	7-99	1292	1-94	Declaration of Disclosure	M
D-113	7-98			Declaration of Service by Mailing and Posting in Lieu of Publication	
D-142	4-00	1285.62	7-97	Declaration of Support Arrearage	M
D-099A	7-99	295.05	1-99	Declaration Re: Service of	
				Declaration of Disclosure	M
D-006	1-01	MC-150	1-01	Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act	A
D-093	1-99	1296.31E	1-99	Domestic Violence Miscellaneous Orders Attachment	M
D-032	1-01	DV-150	1-01	Domestic Violence Restraining Orders Instruction Booklet	A
D-096	1-95	1285.76	1-95	Employer's Health Insurance Return	M
D-127	2-98			Employment Efforts Order	
D-046	1-00			Ex Parte Application	
D-228	7-99	1298.56	7-99	Ex Parte App. for Order for Nondisclosure of Address	
D-233	7-00	1298.60	7-00	Ex Parte Application for Transfer and Order (UIFSA)	M
D-020	8-00	1287.50	7-94	Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order	M
D-038	1-01	1285.65	1-98	Ex Parte Application for Wage Assignment Order	M
D-060	1-95	1297.20	1-95	Expedited Child Support Order	M
D-049	2-00			Family Law Certificate of Assignment	
D-116	1-98			Family Law Settlement Conference Issues	
D-014A	1-98	1285.52	7-95	Financial Statement (Simplified)	A
D-088	1-92	1296.31	1-92	Findings and Order After Hearing	M
D-222	1-99	1299.70	1-99	Findings and Recommendations of Commissioner	M
D-014	5-99	1285.50	1-95	Income and Expense Declaration	A
D-014	5-99	1285.50a	1-95	Income Information	A
D-014	5-99	1285.50b	1-95	Expense Information	A
D-014	5-99	1285.50c	1-95	Child Support Information	A
D-141	7-97	1285.33	7-97	Information Sheet - How to Oppose a Request to Change Child, Spousal or Family Support	A

## San Diego County Superior Court Rules

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-151	1-99	1285.79	1-99	Information Sheet on Changing a Child Support Order	A
D-139	7-97	1285.31	7-97	Information Sheet - Simplified Way to Change Child, Spousal or Family Support	A
D-084A	1-91	1295.12	1-91	Information Sobre La Disolucion Sumaria	M
D-054	11-00			Instructions - Family Law Filings	
D-073	6-00			Instructions for Orders Prohibiting Domestic Violence	
D-044	2-97			Job Contacts	
D-134	7-99			Joint Case Management Statement and Order	
D-081	1-01	1295.10	1-95	Joint Petition for Summary Dissolution of Marriage	M
D-018	7-99	1287	7-99	Judgment	M
D-159	8-00	1296.75	1-99	Judgment (Uniform Parentage)	M
D-232	7-00	1298.58	7-00	Judgment Re: Parental Obligations (UIFSA)	M
D-039	10-95			Memorandum that Family Law Case is At Issue	
D-090A	1-99	1296.31B	1-99	Non-Guideline Child Support Attachment	M
D-211	7-97	1299.19	7-97	Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income and Proposed Answer	M
D-026	1-95	1291.25	1-95	Notice of App./Resp. of Employee Pension Benefit Plan	M
D-176	1-01	1299.77	1-01	Notice of Consolidation	
D-097	1-95	1296.90	1-95	Notice of Delinquency	M
D-021	1-99	1290	1-99	Notice of Entry of Judgment	M
D-053	1-99	1285.10	1-99	Notice of Motion	M
D-022	1-01	1291.10	1-95	Notice of Motion and Declaration for Joinder	M
D-219	7-98	1299.61	7-98	Notice of Motion and Declaration for Joinder of Other Parent in Governmental Action	A
D-138	7-97	1285.30	7-97	Notice of Motion and Motion for Simplified Modification of Order for Child, Spousal or Family Support	M
D-110	1-01	1296.95	1-93	Notice of Motion for Judicial Review of License Denial	M
D-223	1-99	1299.72	1-99	Notice of Objection (Governmental)	M
D-152	1-99	1285.88	1-99	Notice of Registration of Out-of-State Support Order	A
D-083	1-00	1295.30	1-95	Notice of Revocation of Petition for Summary Dissolution	M
D-080	1-95	1285.78	1-95	Notice of Rights and Responsibilities - Health Care Cost Reimbursement Procedures	A
D-086	7-98	1297.92	1-90	Notice of Support Arrearage	M
D-045	1-99	1290.5	1-99	Notice of Withdrawal of Attorney of Record	M
D-216	7-97	1299.49	7-97	Notice to District Attorney on Intent to Take Independent Action to Enforce Support Order (Governmental)	M



## San Diego County Superior Court Rules

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-210	1-99	1298.07	1-99	Order After Hearing (Governmental)	M
D-175	1-01	1296.89	1-01	Order After Hearing on Motion to Set Aside Support Order	
D-172	7-00	1296.79	7-00	Order After Hearing on Motion to Set Aside Voluntary Declaration of Paternity	
D-111	1-01	1296.95	1-93	Order After Judicial Review of License Denial (Child Support)	M
D-041	7-99			Order Appointing Counsel for Minor(s)	
D-215	7-97	1299.46	7-97	Order Determining Claim of Exemption or 3 <sup>rd</sup> Party Claim (Governmental)	M
D-094	1-95	1285.28	1-95	Order for Child Support Security Deposit and Evidence of Deposit	M
D-072	1-00			Order for Removal from Residence	
D-230	7-00			Order/Notice to Withhold Income for Child Support - Federal	
D-231	1-00			Order/Notice to Withhold Income for Child Support - Instructions	
D-050	9-00			Order Setting Aside Judgment of Dissolution of Marriage/Order for Dismissal (Parties Reconciled)	
D-008	6-00	1285	1-99	Order to Show Cause	M
D-226	7-99	1298.52	7-99	Order to Show Cause (UIFSA)	
D-011	7-99	1285.60	7-99	Order to Show Cause and Affidavit for Contempt	M
D-028	1-01	DV-110	1-01	Order to Show Cause and Temporary Restraining Order - DV (CLETS)	M
D-166	1-01	EA-120	1-01	Order to Show Cause and Temporary Restraining Order - EA (CLETS)	A
D-001	1-01	1281	1-01	Petition	M
D-160	1-01	1296.80	1-01	Petition for Custody and Support of Minor Children	
D-164	1-01	EA-100	1-01	Petition for Protective Orders - EA (CLETS)	
D-048	1-01	1296.60	1-01	Petition to Establish Parental Relationship (Uniform Parentage)	A
D-052	6-96			Plea of Guilt/Contempt	
D-063	1-01	1291.35	1-95	Pleading on Joinder - Employee Pension Benefit Plan	M
D-117	7-00			Pre-Read Request for Hearing	
D-149	10-99	1285.84	7-98	Proof of Personal Service	A
D-168	1-01	EA-140	1-01	Proof of Personal Service - EA (CLETS)	A
D-150	7-98	1285.85	7-98	Proof of Service by Mail	A
D-031	1-01	DV-140	1-01	Proof of Service - DV (Uniform Parentage)	M
D-169	1-01	EA-141	1-01	Proof of Service by Mail - EA (CLETS)	A
D-004A	1-91	1283.5	1-91	Proof of Service of Summons	M
D-015	7-99	1285.55	1-80	Property Declaration	M
D-092	1-95	1296.31D	1-95	Property Order Attachment	M
D-163	1-00	1285.74	1-00	Qualified Domestic Relations Order for Support (Earnings Assignment Order for Support)	A
D-154	8-00	1296.45	1-99	Registration of Foreign DV Restraining Order (CLETS)	M
D-019	1-80	1288	1-80	Request and Declaration for Final Judgment of Dissolution of Marriage	M

## San Diego County Superior Court Rules

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-082	1-00	1295.20	1-95	Request for Final Judgment, Final Judgment of Dissolution of Marriage and Notice of Entry of Judgment	M
D-173	1-01	1296.87	1-01	Request for Hearing and Application to Set Aside Support Order	
D-170	7-00	1296.77	7-00	Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity	
D-153	7-99	1285.90	7-99	Request for Hearing Re: Registration of Support Order	
D-213	7-99	1299.28	7-99	Request for Hearing Re: Wage and Earnings Assignment Order	M
D-057	1-01	1291.15	1-95	Request for Joinder of Employee Pension Benefit Plan and Order	M
D-214	7-97	1299.40	7-97	Request for Judicial Determination of Support Arrearages (Governmental)	
D-064	1-94	1292.15	1-94	Request for Production of an Income and Expense Declaration After Judgment	M
D-017	3-00	1286	1-99	Request to Enter Default	M
D-002	1-01	1282	1-01	Response	M
D-059	1-94	1297.10	1-94	Response to Application for Expedited Child Support Order and Notice of Hearing	M
D-161	1-01	1296.81	1-01	Response to Petition for Custody and Support of Minor Children	A
D-165	1-01	EA-110	1-01	Response to Petition for Protective Orders - EA (CLETS)	A
D-051	3-00	1296.65	1-99	Response to Petition to Establish Parental Relationship (Uniform Parentage)	A
D-227	7-99	1298.54	7-99	Response to Uniform Support Petition	
D-174	1-01	1296.88	1-01	Responsive Declaration to Application to Set Aside Support Order	
D-171	7-00	1296.78	7-00	Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity	
D-023	9-00	1291.20	1-20	Responsive Declaration to Motion for Joinder Consent Order of Joinder	M
D-220	7-98	1299.64	7-98	Responsive Declaration to Motion for Joinder of Other Parent - Consent Order of Joinder (Governmental)	M
D-140	1-98	1285.32	1-98	Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal or Family Support	M
D-029	1-01	DV-120	1-01	Responsive Declaration to Order Show Cause - DV	M
D-010	8-00	1285.40	1-99	Responsive Declaration to Order to Show to Cause or Notice of Motion	M
D-087	7-00	DV-130	1-01	Restraining Order After Hearing - DV (CLETS)	M
D-167	1-01	EA-130	1-01	Restraining Order After Hearing - EA (CLETS)	A
D-224	1-99	1299.74	1-99	Review of Commissioner's Findings of Fact and Recommendation (Governmental)	M

## San Diego County Superior Court Rules

Superior Court Form #	Last Revised Date	Judicial Council Form #	Last Revised Date	Form Name	Mandatory or Approved
D-015B	7-90	1292.11	7-90	Schedule of Assets and Debts	M
D-091	1-99	1296.31C	1-99	Spousal or Family Support Order Attachment	M
D-148	7-98	1285.82	7-98	Statement for Registration of California Support Order	A
D-034A	6-00	1285.72	7-90	Stay of Service of Wage Assignment Order and Order	M
D-221	7-98	1299.67	7-98	Stipulation and Order for Joinder of Other Parent (Governmental)	M
D-036	7-98			Stipulation and Order on Order to Show Cause	
D-035	4-00			Stipulation and Order on Order to Show Cause (Courtroom Use Only)	
D-158	1-99	1296.74	1-99	Stipulation for Entry of Judgment Re: Establishment of Parental Relationship	M
D-056	1-95	1285.57	1-95	Stipulation to Establish or Modify Child Support and Order	M
CIV-014	4-99	MC-050	1-96	Substitution of Attorney	A
D-084	1-81	1295.11	1-81	Summary Dissolution Information	M
D-084(1)	1-93	1295.11A	1-93	Summary Dissolution Information Insert	M
D-004	1-01	1283	1-01	Summons	M
D-076	4-00	1291.40	1-79	Summons (Joinder)	M
D-155	7-99	1296.605	7-99	Summons (Uniform Parentage - Petition for Custody and Support)	M
D-229	7-99	1298.50	7-99	Summons (UIFSA)	
D-089A	1-99	1296.31A(1)	1-99	Supervised Visitation Order	A
D-079	4-00			Superior Court Local Rules (Short Cause Trial)	
D-016	3-00	1285.05	1-99	Temporary Orders	M
D-043	8-00			Trial Readings Procedures for Long Cause Trial	
D-034	1-00	1285.70	1-00	Wage and Earnings Assignment Order for Spousal Support	M
CIV-262	4-99	EJ-130	1-97	Writ of Execution	A

Revised 7/1/99; 7/1/2001

